

# OFFICE of ADMINISTRATIVE HEARINGS



## Judicial Development Program



## Office-wide summary

OCTOBER 1999

*A Management Analysis Division Report*



*Admin*  
**MINNESOTA**

Department of Administration

MANAGEMENT ANALYSIS DIVISION

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of ADMINISTRATIVE  
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The Management Analysis Division is Minnesota government's in-house fee-for-service management consulting group. We are in our second decade of helping public managers increase their organization's effectiveness and efficiency. We provide quality management consultation services to local, regional, state, and federal government agencies.

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## EXECUTIVE SUMMARY

**T**he Minnesota Office of Administrative Hearings (OAH) conducts administrative law, worker's compensation, and rule making hearings. In September 1998, the chief administrative law judge established a judicial development program. The program's purpose is to identify for the judges the things they are doing well and identify aspects of their performance that could be improved.

The chief administrative law judge contracted with the Management Analysis Division for assistance in implementing the program. The division's primary role was helping the OAH design a written questionnaire to solicit feedback from parties ("non-attorneys") and legal counsel ("attorneys") who have appeared before the judges, receiving and tabulating completed questionnaires, and creating an individual report for each judge. The division's secondary role was to review the data for all judges as a group and write this office-wide summary.

The questionnaires asked respondents to rate a judge's performance in areas concerning judicial conduct, management of proceedings, and legal knowledge and abilities (attorneys only). The questionnaires also had open-ended questions asking respondents about the judge's strengths and areas of improvement, and if there were any incidents during the proceedings that demonstrated the judge's fairness or bias. The OAH mailed a total of 3,520 questionnaires to attorneys and non-attorneys. A total of 1,607 were returned, for a response rate of 46 percent. Attorneys completed almost three-quarters of the returned questionnaires.

*The chief administrative law judge contracted with the Management Analysis Division for assistance in implementing a judicial development program. This report summarizes the questionnaires completed by attorneys and parties who appeared before OAH judges.*

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The questionnaire results show that both attorney and non-attorney respondents gave the judges very positive ratings. Three-quarters or more of respondents who answered a statement chose “excellent” or “good” for each of the 21 statements. On average, 11 percent of respondents chose “fair” for a statement, 3 percent chose “poor,” and 2 percent chose “very poor.”

The four statements with the highest combined percentages of “excellent” and “good” responses, ranging from 91 to 89 percent, were:

- “Starting the proceedings on time” (56 percent “excellent,” 35 percent “good”)
- “Giving you or your attorney opportunities to speak” (57 percent “excellent,” 33 percent “good”)
- “Showing respect to you” (62 percent “excellent,” 28 percent “good”)
- “Paying attention during the proceedings” (59 percent “excellent,” 30 percent “good”)

The four statements with the lowest combined percentages of “excellent” and “good” responses, ranging from 80 to 77 percent, were:

- “Writing understandable and thorough decisions” (attorneys only) (45 percent “excellent,” 35 percent “good”)
- “Assisting people in narrowing the issues” (40 percent “excellent,” 39 percent “good”)
- “Basing decisions on evidence, testimony, and law” (attorneys only) (44 percent “excellent,” 34 percent “good”)
- “Skillfully handling settlement conferences and mediations” (42 percent “excellent,” 35 percent “good”)

Attorney results were similar to non-attorney results in terms of which statements had the highest and lowest percentages of respondents choosing “excellent,” with a few exceptions. Fifty-three percent of attorney respondents who rated the statement, “Being familiar with the issues of the case,” chose “excellent” compared with 41 percent of non-attorney respondents. For the statement about starting the proceedings on time, 58 percent of attorneys rated the judges as “excellent,” compared with 49 percent of non-attorneys. Sixty-four percent of attorneys choose “excellent” for the statement about showing respect, while 56 percent of the non-attorneys did. A higher proportion of non-attorneys, 51 percent, rated the judges as “excellent” in maintaining control, compared with 43 percent of attorneys.

Respondents’ written comments reflected their positive ratings on the multiple-choice statements. Attorney and non-attorney respondents often described a judge’s behavior and attitude towards all parties as respectful, courteous, patient, and/or fair. Many respondents said a

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judge's strengths in handling and managing the proceedings were controlling or keeping them orderly, keeping the hearing moving along, and being prepared. Many attorneys wrote that the strength of a judge's legal knowledge and ability is the judge's knowledge of relevant statute and case laws, and procedures. Attorney and non-attorney respondents who explained why they thought a judge was fair typically said it was because the judge listened to both sides or treated them equally in some manner.

Few respondents wrote comments about how a judge could improve his or her attitude, management of proceedings, or legal knowledge and abilities. Many respondents indicated no improvement was necessary in their response to these questions. Actual suggestions for improvement were similar to what respondents said the judges did well: being more patient or fair, controlling when people speak, being better prepared or more familiar with the case, and understanding the law, procedures, and/or rules better. The most common remark about a judge's unfairness or bias concerned the judge always favoring one type of party, such as employees.

## **CONCLUSIONS**

The very positive questionnaire results provide baseline figures for comparing future questionnaires' results and assessing judicial performance improvement efforts. The statements with a high percentage of "excellent" responses could be used as a benchmark or performance goal for the other statements. For example, the OAH may set a goal of having 50 percent or more of respondents rating the judges as "excellent" for all the questionnaire statements.

The low response rate causes some concern that the results may not represent all individuals who appear before the judges. Typically, a 60 percent or higher response rate is required to accept the results as representing the population. This project's 46 percent response rate does not reach that level. Future surveying efforts should attempt to raise the response rate through some method so the results better represent all parties.

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## INTRODUCTION

**T**he Minnesota Office of Administrative Hearings (OAH) conducts administrative law, worker's compensation, and rule making hearings. The office also heard child support cases until the Minnesota Court System assumed this function in July 1999. In September 1998, the chief administrative law judge established a judicial development program. The program's purpose is to identify for the judges the things they are doing well and identify aspects of their performance that could be improved.

The program consisted of using a written questionnaire to solicit feedback from parties ("non-attorneys")<sup>1</sup> and legal counsel ("attorneys") who have appeared before the judges and having each judge review his or her questionnaire results with a "mentor," usually another OAH judge. The questionnaires asked respondents to rate a judge's performance in areas concerning judicial conduct, management of proceedings, and legal knowledge and abilities (attorney questionnaire only). The statements' five rating choices ranged from "excellent" to "very poor," with a sixth choice of "does not apply." The questionnaires also had open-ended questions asking respondents about the judge's strengths and areas of improvement and if there were any incidents during the proceedings that showed the judge's fairness or bias.

## METHOD

The chief administrative law judge contracted with the Management Analysis Division for assistance in implementing the program's questionnaire component. The division's primary role was helping the OAH design a written questionnaire, receiving and tabulating completed questionnaires, and creating an individual report for each judge. OAH administrative (non-judicial) staff were responsible for selecting non-attorneys and attorneys' names and mailing the questionnaires, cover letters, and reminder letters. Both the cover letter and questionnaire stated that responses would remain anonymous and that the questionnaire contained no code to identify the respondent.

The OAH typically sent questionnaires to 75 to 100 individuals who had recently appeared before a judge. Some judges hear several hundred cases each year, so their questionnaire recipients were randomly selected. Other judges have less than 25 cases each year so all people appearing before them were sent a questionnaire. Additionally, individuals who had multiple cases before a particular judge were only sent one questionnaire for that judge. The

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<sup>1</sup>Non-attorneys included: (1) unrepresented people; (2) represented people; (3) witnesses and rule hearing participants; (4) interpreters; (5) security staff; (6) court reporters; (7) employers; (8) insurance representatives; (9) Qualified Rehabilitation Consultants; (10) county representatives; and (11) state agency representatives.

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OAH mailed the questionnaires to specific recipients a couple of weeks after the individual's final case orders were mailed.

Two questionnaires were used: one for non-attorneys and one for attorneys. The non-attorney questionnaire contained 16 multiple-choice statements and seven open-ended questions. The attorney questionnaire had the same questions as the non-attorney one, plus five additional multiple-choice questions and two more open-ended ones. These additional questions concerned the judge's legal knowledge and abilities.

OAH staff developed the questionnaires by reviewing other court systems' judicial development programs and working with an OAH judges advisory group. The Management Analysis Division also reviewed the questionnaires and suggested changes in wording, question order, and content. Twenty-five attorneys and OAH staff and judges "pretested" draft questionnaires. After completing the draft questionnaires, these individuals completed a one-page sheet that asked about the questionnaires' content, readability, and completion time. OAH and Management Analysis Division staff reviewed the pretest results and revised the questionnaires. Appendix C contains the two final questionnaires.

## RESPONSE RATE

The OAH mailed a total of 3,520 questionnaires to attorneys and non-attorneys. A total of 1,607 were returned, for a response rate of 46 percent. Table 1 shows the overall response rate for each judges' group.

Because of the low response rate, the questionnaire data should not be interpreted as representing all attorneys and non-attorneys who appeared before OAH judges. The results indicate only what the respondents said, not what non-respondents think about a particular issue.

**TABLE 1. Questionnaire response rate by judge division**

Judge division	Questionnaires mailed	Questionnaires returned	Response rate
Administrative Procedures Act	659	278	42.2%
Worker's Compensation - Hearings	1,902	943	49.6
Worker's Compensation - Settlement	959	386	40.3
<b>Total</b>	3,520	1,607	45.7%

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## **SCOPE**

Further data limitations include the variation in how respondents interpreted the statements and the possibility that those who completed a questionnaire are more or less dissatisfied than non-respondents or that their mood at the time of completing the questionnaire might affect their responses. This report focuses on the judicial development program results as they pertain to the OAH judges as a group. The Management Analysis Division did not examine any individual judge's results. This report does not discuss any particular judge's strengths and areas of improvement nor the results of the judges' meetings with their mentors.

OAH staff mailed the first questionnaires in November 1998 and the last ones in August 1999.

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## OFFICE-WIDE RESULTS

This section summarizes the tabulated questionnaire results for the Administrative Procedures Act, Worker’s Compensation - Hearings, and Worker’s Compensation - Settlement division judges as a group and 400 randomly-selected questionnaires’ responses to the open-ended questions.

Table 2 shows the distribution of the 1,607 returned questionnaires. Attorneys completed almost three-quarters of the returned questionnaires. Questionnaires for Worker’s Compensation judges, both hearing and settlement divisions, equaled 83 percent of the total number of returned questionnaires.

**TABLE 2. Questionnaire count by judge division**

Judge division	Total questionnaires		Attorney questionnaires		Non-attorney questionnaires	
	Count	Percentage	Count	Percentage	Count	Percentage
Administrative Procedures Act	278	17.3%	173	62.2%	105	37.8%
Worker’s Compensation - Hearings	943	58.7	740	78.5	203	21.5%
Worker’s Compensation - Settlement	386	24.0	272	70.5	114	29.5%
<b>Total</b>	<b>1,607</b>	<b>100.0%</b>	<b>1,185</b>	<b>73.7%</b>	<b>422</b>	<b>26.3%</b>

## SUMMARY of RESPONSES to STATEMENTS

The questionnaires asked respondents to rate a judge’s performance in areas concerning judicial conduct, management of proceedings, and legal knowledge and abilities (attorney questionnaire only). The statements’ five rating choices ranged from “excellent” to “very poor,” with a sixth choice of “does not apply.”

A statement’s percentages discussed here are based on the number of respondents who chose one of the five rating choices. The percentages do not include respondents who did not answer or who chose “does not apply.” Generally about 1 to 3 percent, or 16 to 48 respondents, chose “does not apply” or did not respond; a couple of statements showed a high percentage of respondents indicating “does not apply” or not providing an answer. These statements referred to whether the judge acted appropriately to resolve problems during the proceedings (394 of 1,607 respondents, or 25 percent, did not choose a rating) and whether the judge skillfully handled settlement conferences and mediations (540 respondents, or 34 percent).

This report's appendices contain the tabulated questionnaire results. Appendix A has the results that exclude "Does not apply" and no answer responses, and Appendix B has the results that include them. The percentages discussed here are taken from Appendix A.

## OVERALL

The questionnaire results show that both attorney and non-attorney respondents gave the judges very positive ratings. Three-quarters or more of respondents who answered a statement chose "excellent" or "good" for each of the 21 statements. The percentages of respondents choosing "excellent" ranged from 34 percent to 62 percent. The range was 28 to 47 percent for the "good" responses. Only one statement, "Preventing participants from making lengthy, repetitive statements ('rambling')," showed a higher proportion of respondents choosing "good" than "excellent": 47 percent vs. 34 percent. A close second was "Assisting people in narrowing the issues." Forty percent of respondents gave the judges "excellent" ratings, and 39 percent gave them "good" ratings.

The four statements with the highest combined percentages of "excellent" and "good" responses were:

- "Starting the proceedings on time" (56 percent "excellent," 35 percent "good")
- "Giving you or your attorney opportunities to speak" (57 percent "excellent," 33 percent "good")
- "Showing respect to you" (62 percent "excellent," 28 percent "good")
- "Paying attention during the proceedings" (59 percent "excellent," 30 percent "good")

The four statements with the lowest combined percentages of "excellent" and "good" responses were:

- "Writing understandable and thorough decisions" (attorneys only) (45 percent "excellent," 35 percent "good")
- "Assisting people in narrowing the issues" (40 percent "excellent," 39 percent "good")
- "Basing decisions on evidence, testimony, and law" (attorneys only) (44 percent "excellent," 34 percent "good")
- "Skillfully handling settlement conferences and mediations" (42 percent "excellent," 35 percent "good")

The statement "Preventing participants from making lengthy, repetitive statements ('rambling')" had the lowest percentage of "excellent" respondents: 34 percent.

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On average, 11 percent of respondents chose “fair” for a statement, 3 percent chose “poor,” and 2 percent chose “very poor.” Three statements had almost 15 percent of respondents choosing “fair”: “Skillfully handling settlement conferences and mediations,” “Assisting people in narrowing the issues,” and “Preventing participants from making lengthy, repetitive statements (‘rambling’).” The statements with the highest combined percentages of “poor” and “very poor” respondents concerned promoting fairness (seven percent), being open-minded (eight percent), and basing decisions on evidence, testimony, and the law (attorneys-only; 9 percent).

## **RESULTS by RESPONDENT TYPE**

Given the high proportion of respondents who chose “excellent” or “good,” few areas appear to exist for significant improvement in the judges’ performance, as a group. However, the percent of attorney and non-attorney respondents who chose “excellent” for each statement does vary. Each respondent group’s results are presented by the statements with the lowest and highest percentages choosing “excellent.”

### **ATTORNEY RESULTS**

The four statements with the highest percentage of attorney respondents choosing “excellent” were:

- “Showing respect to you” (64 percent chose “excellent”)
- “Paying attention during the proceedings” (60 percent)
- “Remaining even-tempered throughout the proceedings” (60 percent)
- “Starting the proceedings on time” (58 percent)

The four statements with the lowest percentage of attorney respondents choosing “excellent” were:

- “Maintaining appropriate control over who speaks and when” (43 percent chose “excellent”)
- “Skillfully handling settlement conferences and mediations” (41 percent)
- “Assisting people in narrowing the issues” (39 percent)
- “Preventing participants from making lengthy, repetitive statements (‘rambling’)” (32 percent)

The three statements about settlement conferences, narrowing issues, and preventing participants from rambling showed the highest percentages of attorney respondents choosing “fair”: about 15 to 16 percent each. The settlement conference and being open-minded statements each had 7 percent of attorney respondents choosing “poor” or “very poor.”

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Generally, 44 to 49 percent of respondents chose “excellent” and 34 to 40 percent chose “good” for the five attorney-only statements, which concerned the judges’ knowledge of the rules of procedure, evidence, and substantive law; basing decisions on evidence, testimony, and the law; and writing understandable and thorough decisions. The statement, “Basing decisions on evidence, testimony, and the law,” showed the highest percentage of respondents choosing “poor” (6 percent) and “very poor” (3 percent).

## **NON-ATTORNEY RESULTS**

The four statements with the highest percentage of non-attorney respondents choosing “excellent” were:

- “Remaining even-tempered throughout the proceedings” (61 percent chose “excellent”)
- “Giving you or your attorney opportunities to speak” (58 percent)
- “Paying attention during the proceedings” (57 percent)
- “Showing respect to you” (56 percent)

The four statements with the lowest percentage of non-attorney respondents choosing “excellent” were:

- “Skillfully handling settlement conferences and mediations” (44 percent chose “excellent”)
- “Assisting people in narrowing the issues” (43 percent)
- “Being familiar with the issues of the case” (41 percent)
- “Preventing participants from making lengthy, repetitive statements (‘rambling’)” (38 percent)

The statements about being familiar with the case’s issues and assisting people had the highest percentages of non-attorney respondents choosing “fair”: 13 percent. Eleven percent of respondents chose this answer for the statements about preventing participants from rambling, promoting a sense of fairness, handling settlement conferences, and being decisive. The statements about being familiar with the case’s issue, promoting fairness, and skillfully handling settlement conferences also showed equal percentages of respondents choosing either “poor” or “very poor” as they did “fair.” A few statements showed noticeable differences between attorney and non-attorney results.

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**TABLE 3. Randomly selected questionnaire count by judge division**

Judge division	Total questionnaires		Attorney questionnaires	Non-attorney questionnaires
Administrative Procedures Act	100	25%	75	25
Worker's Compensation - Hearings	200	50	150	50
Worker's Compensation - Settlement	100	25	75	25
<b>TOTAL</b>	400	100.0%	300	100

Fifty-three percent of attorney respondents who rated the statement, “Being familiar with the issues of the case,” chose “excellent” compared with 41 percent of non-attorney respondents who rated the statement. Thirteen percent of non-attorney respondents chose “poor” or “very poor” for this statement, compared with 4 percent of attorneys.

Similar differences existed for the statements about starting the proceedings on time (58 percent of attorneys rated the judges as “excellent,” compared with 49 percent of non-attorneys) and showing respect (64 percent attorneys, 56 percent non-attorneys). A higher proportion of non-attorneys, 51 percent, rated the judges as “excellent” in maintaining control, compared with 43 percent of attorneys. Four percent of attorneys rated the judges as “poor” or “very poor” on issuing written documents in a timely manner, compared with 12 percent of non-attorneys.

## **SUMMARY of WRITTEN COMMENTS**

The open-ended questions asked respondents about the strengths and areas of improvement concerning the judge’s judicial conduct, management of proceedings, and legal knowledge and abilities. The questionnaires also asked if there were any incidents during the proceedings that showed the judge’s fairness or bias. This section summarizes 400 randomly-selected questionnaires’ responses.

Table 3 shows the 400 questionnaires’ distribution by respondent type and judge’s group. Attorney questionnaires were three-quarters of the total. The sample’s distribution is roughly proportional to the population of 1,607 questionnaires, although the Administrative Procedures Act judges are over-represented by 30 questionnaires, and the Worker’s Compensation - Hearing judges are under-represented by the same number. The 400 questionnaires were selected from 1,172 out of the 1,607 that had at least one written comment, and typically four of the open-ended questions had a response. On average, the sample contains one-third of each judge’s questionnaires.

The open-ended questions were:

*What are the positive aspects of this judge's attitude and behavior toward all people in the courtroom?*

*What can this judge do to improve his or her attitude and behavior toward all people in the courtroom?*

*What are this judge's strengths in managing and handling the proceedings?*

*What can this judge do to improve his or her management and handling of proceedings?*

*What are the strengths of this judge's legal knowledge and ability? (attorneys only)*

*What areas of this judge's legal knowledge and ability need improvement? (attorneys only)*

*Were there any incidents during the proceedings that showed the judge's fairness? If yes, please explain without mentioning any case specifics.*

*Were there any incidents during the proceedings that showed the judge's bias or unfairness? If yes, please explain without mentioning any case specifics.*

*Do you have any additional comments?*

Three-quarters or more of the respondents wrote one or more positive comments about a judge. For the questions about what areas a judge needed to improve, over 50 to 70 percent of respondents, depending on the question, did not write any comments, and many who did indicated that no improvement was necessary.

Many of the respondents' comments were consistent with each other, and in others, differing views were expressed or a limited number of respondents raised a particular issue or concern. The terms "many," "several," "some," and "few" are used here to give a general idea of how many respondents made the same or similar points. Also, not everyone expressed an opinion on each issue raised.

This section summarizes the questionnaires according to the judges' strengths, areas of improvement, and fairness. Responses to the questionnaire's final question, "Do you have any additional comments?" repeated themes from earlier questions. These comments are included in the groupings below.

## **STRENGTHS**

Attorney and non-attorney respondents described a judge's behavior and attitude as:

- respectful and/or courteous;
  - patient, calm or even-tempered;
-



- fair, open-minded, objective, or impartial, or treating everyone equally;
- professional or businesslike;
- making parties feel comfortable or relaxed;
- having a good sense of humor;
- showing interest in the case or compassion or understanding towards a person's situation;
- listening well; and
- allowing all parties the opportunity to speak.

The most common remarks concerned a judge's respect and courtesy, patience, and fairness. Many attorney and non-attorney respondents complimented the judges as their response to the "any additional comments" question. Respondents stated that a judge was "excellent" or "very good" or did an excellent, outstanding or very good job, or that they are glad to be assigned to or appear before the judge. Many respondents compared a judge very favorably to the other judges, writing that a judge sets an example for other judges, or is the best or one of best.

Attorney and non-attorney respondents typically described a judge's strengths in handling and managing the proceedings as:

- knowledge and understanding of the particular case and issues;
- being well organized and prepared;
- starting on time;
- controlling the proceedings or keeping them orderly;
- keeping the hearing moving along;
- focusing on the relevant issues or helping the parties to remain focused on them; and
- communicating the procedures and process to parties.

Several gave examples of a judge controlling a specific party's action, such as stopping one party's verbal attacks on the other or someone speaking out of turn. Some described how a judge assists parties by looking for common ground, narrowing the issues, pushing for a settlement, or helping to resolve the case. Several respondents described a judge who remains in control but also remains calm, fair, or respectful in doing so. Some wrote about a judge who could keep the proceedings moving along while giving all parties the opportunity to speak.

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Many attorneys wrote that the strengths of a judge's legal knowledge and ability is the judge's knowledge of relevant statute and case laws and procedures, with some specifically mentioning their application as a strength. Often an attorney described a judge as "very" knowledgeable or said that the judge's knowledge was "very good," "excellent," or has "depth." Some said the judge's experience was a strength. Others complimented a judge's thinking, analytical, or writing abilities. A few said a judge was thorough or would research issues if necessary.

## **AREAS for IMPROVEMENT**

Common suggestions for improving a judge's behavior and attitude were for the judge to be more patient or polite, or less intimidating. Another frequent suggestion was for the judge to be more fair or treat all parties more fairly. Some said or implied that a judge is biased toward or favors one type of party, or is friendly with some participants but not others. Some said a judge should appear more interested in the case, with a few saying that the judge did not ask questions, appeared bored, or was unprepared. A few described a judge as closed-minded.

For improving their handling and management of proceedings, many respondents suggested that judge:

- control when people speak or parties who "attack" the other side;
- remain focused on the issues or keep parties focused;
- be better prepared or more familiar with the case;
- start the proceedings on time or make them go faster;
- listen better; and
- consider all the evidence.

Other respondents had a variety of specific suggestions, from having the judge be more active in settlements to not pushing for a settlement too early. A few respondents wrote that they could see no strengths in the judge, or they were very critical of the judge's abilities.

Most attorneys responding to how a judge could improve his or her legal knowledge and abilities said a judge needs to understand the law, procedures, and/or rules better. A few said a judge had no trial experience or background in the specific area. Others wrote very specific comments, such as saying the judge interpreted facts incorrectly, needs to see the "big picture," or could improve how settlement conferences are handled.

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A few respondents had complaints that were not about a specific judge, but are more “system” issues. A couple discussed the problems that certain laws or rules create for the judges and the impacts on the hearings. For example, one respondent wrote that “My concerns are not at all focused on [the judge’s] ability, but instead on the Administrative Rules Process - we need to update this process to create better dialogue - and better understanding regarding the necessity for the particular rules being discussed.” Another wrote that “OAH policy should not allow or condone the unauthorized practice of law by allowing a person who is not an attorney to represent someone other than him or her self.” One attorney respondent wrote about problems with the 1995 Worker’s Compensation law reforms, and a couple of non-attorneys wrote that an agency ignored a judge’s decisions.

## **FAIRNESS**

Respondents’ remarks about a judge’s fairness were either a general comment about a judge’s overall fairness, or a specific description about how a judge was fair. Many described how a judge treated both sides equally, most often that the judge gave each sufficient time to speak, to present their case, or respond to the other party’s statement or evidence. Some wrote that a judge reviewed materials or reached a decision carefully, kept an open-mind, listened to both sides, or allowed additional evidence to be submitted. Some wrote about a judge assisting an attorney or party during the proceedings. A few respondents wrote about a judge dealing with inappropriate behavior.

Most attorneys and non-attorneys who wrote about a judge’s bias or unfairness said generally the judge was biased or unfair without giving specifics, or said or implied the judge favored a certain type of party. Others mentioned how certain decisions or actions by the judge showed a bias or unfairness, such not appearing receptive to an attorney’s argument, relying on one side’s argument too much or giving certain evidence more weight, or treating someone poorly.

Attorneys and non-attorneys talked about or implied a judge’s unfairness or bias in their response to the “any additional comments” question. Some attorneys said a judge was biased towards employees and a couple said the judge gave more weight to the employee’s testimony though it was contradicted by other evidence.

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## CONCLUSIONS

**T**he tabulated questionnaire results indicate that attorney and non-attorney respondents believe OAH judges, as a group, perform their jobs well. Three-quarters or more of respondents who answered a statement chose “excellent” or “good” for each of the 21 statements. Most responses to the questionnaires’ open-ended questions were positive or complimentary, too.

The percent of respondents answering “excellent” for a statement ranged from 34 percent to 62 percent, and eight statements had 50 percent or more respondents choosing this rating. This year’s data could serve as baseline figures for comparing future questionnaires’ results. Additionally, these upper-range figures could be used as a benchmark or performance goal for the other statements. For example, the OAH may set a goal of having 50 percent or more of respondents rating the judges’ as “excellent” for all the questionnaire statements.

The low response rate causes some concern that the results may not represent all individuals who appear before the judges. Typically, a 60 percent or higher response rate is desired for accepting the results as representing the population. This project’s 46 percent response rate does not reach that level, though it is an excellent response rate for a mail survey, which typically have much lower ones. It is unknown why people who received questionnaires did not return them. People may not return a questionnaire for several reasons: the survey is too long, the survey topic is not relevant or important to them, they are concerned about being identified, they thought everything was fine and found no reason to comment, or they were so dissatisfied they did not feel like commenting.

The OAH did not want the questionnaires to contain an identifying code to assure respondents that their comments would truly be anonymous. Without an identifying code, however, it is not possible to target intensive follow-up efforts to non-respondents. Future surveying efforts should attempt to raise the response rate through some method so the results better represent all parties.

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## **APPENDICES**

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**TABULATED RESPONSES to STATEMENTS 23**  
(excluding “Does not apply” and no-answer responses)

**QUESTIONNAIRES 27**

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**SURVEY RESULTS****Office-wide****Total questionnaires = 1,607 (1,185 attorney and 422 non-attorney)****Please rate the judge's performance in the following areas:**

	Overall		Attorneys		Non-attorneys	
	Number	Percent	Number	Percent	Number	Percent
<b>Showing respect to you</b>						
Excellent	987	61.7%	754	63.8%	233	55.7%
Good	450	28.1%	317	26.8%	133	31.8%
Fair	117	7.3%	82	6.9%	35	8.4%
Poor	23	1.4%	15	1.3%	8	1.9%
Very poor	22	1.4%	13	1.1%	9	2.2%
Totals	1599	100.0%	1181	100.0%	418	100.0%
<b>Showing patience with you</b>						
Excellent	849	53.7%	625	53.3%	224	54.9%
Good	498	31.5%	376	32.1%	122	29.9%
Fair	167	10.6%	129	11.0%	38	9.3%
Poor	41	2.6%	26	2.2%	15	3.7%
Very poor	25	1.6%	16	1.4%	9	2.2%
Totals	1580	100.0%	1172	100.0%	408	100.0%
<b>Promoting a sense of fairness</b>						
Excellent	811	50.8%	598	50.8%	213	51.0%
Good	505	31.7%	391	33.2%	114	27.3%
Fair	162	10.2%	115	9.8%	47	11.2%
Poor	74	4.6%	48	4.1%	26	6.2%
Very poor	43	2.7%	25	2.1%	18	4.3%
Totals	1595	100.0%	1177	100.0%	418	100.0%
<b>Being open-minded throughout the proceedings</b>						
Excellent	779	48.9%	563	48.0%	216	51.7%
Good	504	31.7%	388	33.0%	116	27.8%
Fair	180	11.3%	137	11.7%	43	10.3%
Poor	85	5.3%	57	4.9%	28	6.7%
Very poor	44	2.8%	29	2.5%	15	3.6%
Totals	1592	100.0%	1174	100.0%	418	100.0%
<b>Remaining even-tempered throughout the proceedings</b>						
Excellent	955	60.0%	700	59.7%	255	61.0%
Good	455	28.6%	335	28.6%	120	28.7%
Fair	130	8.2%	100	8.5%	30	7.2%
Poor	30	1.9%	24	2.0%	6	1.4%
Very poor	21	1.3%	14	1.2%	7	1.7%
Totals	1591	100.0%	1173	100.0%	418	100.0%

	Overall		Attorneys		Non-attorneys	
	Number	Percent	Number	Percent	Number	Percent
<b>Starting the proceedings on time</b>						
Excellent	879	55.8%	678	58.3%	201	48.8%
Good	551	35.0%	392	33.7%	159	38.6%
Fair	102	6.5%	69	5.9%	33	8.0%
Poor	27	1.7%	15	1.3%	12	2.9%
Very poor	16	1.0%	9	0.8%	7	1.7%
Totals	1575	100.0%	1163	100.0%	412	100.0%
<b>Being familiar with the issues of the case</b>						
Excellent	792	49.8%	621	52.8%	171	41.4%
Good	551	34.7%	415	35.3%	136	32.9%
Fair	150	9.4%	96	8.2%	54	13.1%
Poor	66	4.2%	36	3.1%	30	7.3%
Very poor	31	1.9%	9	0.8%	22	5.3%
Totals	1590	100.0%	1177	100.0%	413	100.0%
<b>Paying attention during the proceedings</b>						
Excellent	940	59.2%	701	60.0%	239	56.9%
Good	482	30.4%	360	30.8%	122	29.0%
Fair	109	6.9%	77	6.6%	32	7.6%
Poor	37	2.3%	18	1.5%	19	4.5%
Very poor	20	1.3%	12	1.0%	8	1.9%
Totals	1588	100.0%	1168	100.0%	420	100.0%
<b>Giving you or your attorney opportunities to speak</b>						
Excellent	896	57.0%	660	56.7%	236	57.8%
Good	519	33.0%	400	34.4%	119	29.2%
Fair	119	7.6%	89	7.6%	30	7.4%
Poor	26	1.7%	11	0.9%	15	3.7%
Very poor	12	0.8%	4	0.3%	8	2.0%
Totals	1572	100.0%	1164	100.0%	408	100.0%
<b>Preventing participants from making lengthy, repetitive statements</b>						
Excellent	497	33.6%	350	32.1%	147	37.7%
Good	690	46.6%	527	48.3%	163	41.8%
Fair	214	14.5%	170	15.6%	44	11.3%
Poor	56	3.8%	29	2.7%	27	6.9%
Very poor	23	1.6%	14	1.3%	9	2.3%
Totals	1480	100.0%	1090	100.0%	390	100.0%
<b>Maintaining appropriate control over who speaks and when</b>						
Excellent	711	45.3%	500	43.3%	211	51.0%
Good	661	42.2%	506	43.8%	155	37.4%
Fair	150	9.6%	118	10.2%	32	7.7%
Poor	35	2.2%	23	2.0%	12	2.9%
Very poor	11	0.7%	7	0.6%	4	1.0%
Totals	1568	100.0%	1154	100.0%	414	100.0%

	Overall		Attorneys		Non-attorneys	
	Number	Percent	Number	Percent	Number	Percent
<b>Being decisive throughout the proceedings, such as when objections are raised</b>						
Excellent	663	44.9%	500	45.1%	163	44.2%
Good	578	39.1%	432	39.0%	146	39.6%
Fair	176	11.9%	137	12.4%	39	10.6%
Poor	44	3.0%	30	2.7%	14	3.8%
Very poor	17	1.2%	10	0.9%	7	1.9%
Totals	1478	100.0%	1109	100.0%	369	100.0%
<b>Acting appropriately to resolve problems (such as outbursts, inappropriate behavior, lateness) arising during the proceedings</b>						
Excellent	551	45.4%	410	44.8%	141	47.3%
Good	483	39.8%	366	40.0%	117	39.3%
Fair	139	11.5%	110	12.0%	29	9.7%
Poor	25	2.1%	18	2.0%	7	2.3%
Very poor	15	1.2%	11	1.2%	4	1.3%
Totals	1213	100.0%	915	100.0%	298	100.0%
<b>Assisting people in narrowing the issues</b>						
Excellent	589	39.9%	429	38.7%	160	43.2%
Good	578	39.1%	450	40.6%	128	34.6%
Fair	217	14.7%	169	15.3%	48	13.0%
Poor	60	4.1%	40	3.6%	20	5.4%
Very Poor	34	2.3%	20	1.8%	14	3.8%
Totals	1478	100.0%	1108	100.0%	370	100.0%
<b>Skillfully handling settlement conferences and mediations</b>						
Excellent	446	41.8%	316	40.9%	130	44.2%
Good	374	35.1%	275	35.6%	99	33.7%
Fair	159	14.9%	127	16.4%	32	10.9%
Poor	57	5.3%	37	4.8%	20	6.8%
Very poor	31	2.9%	18	2.3%	13	4.4%
Totals	1067	100.0%	773	100.0%	294	100.0%
<b>Knowing relevant substantive law (attorneys only)</b>						
Excellent	538	46.1%	538	46.1%	0	
Good	441	37.8%	441	37.8%	0	
Fair	131	11.2%	131	11.2%	0	
Poor	36	3.1%	36	3.1%	0	
Very poor	20	1.7%	20	1.7%	0	
Totals	1166	100.0%	1166	100.0%	0	
<b>Knowing rules of procedure (attorneys only)</b>						
Excellent	559	49.0%	559	49.0%	0	
Good	431	37.8%	431	37.8%	0	
Fair	111	9.7%	111	9.7%	0	
Poor	24	2.1%	24	2.1%	0	
Very poor	15	1.3%	15	1.3%	0	
Totals	1140	100.0%	1140	100.0%	0	



	Overall		Attorneys		Non-attorneys	
	Number	Percent	Number	Percent	Number	Percent
<b>Knowing rules of evidence (attorneys only)</b>						
Excellent	476	43.9%	476	43.9%	0	
Good	428	39.5%	428	39.5%	0	
Fair	138	12.7%	138	12.7%	0	
Poor	26	2.4%	26	2.4%	0	
Very poor	16	1.5%	16	1.5%	0	
Totals	1084	100.0%	1084	100.0%	0	
<b>Basing decisions on evidence, testimony, and law (attorneys only)</b>						
Excellent	505	44.2%	505	44.2%	0	
Good	384	33.6%	384	33.6%	0	
Fair	152	13.3%	152	13.3%	0	
Poor	65	5.7%	65	5.7%	0	
Very poor	37	3.2%	37	3.2%	0	
Totals	1143	100.0%	1143	100.0%	0	
<b>Writing understandable and thorough decisions (attorneys only)</b>						
Excellent	511	44.9%	511	44.9%	0	
Good	397	34.9%	397	34.9%	0	
Fair	160	14.0%	160	14.0%	0	
Poor	41	3.6%	41	3.6%	0	
Very poor	30	2.6%	30	2.6%	0	
Totals	1139	100.0%	1139	100.0%	0	
<b>Issuing written findings, conclusions, and/or orders in a timely manner</b>						
Excellent	757	48.9%	579	50.4%	178	44.5%
Good	548	35.4%	408	35.5%	140	35.0%
Fair	154	9.9%	120	10.4%	34	8.5%
Poor	48	3.1%	25	2.2%	23	5.8%
Very poor	42	2.7%	17	1.5%	25	6.2%
Totals	1549	100.0%	1149	100.0%	400	100.0%

## **QUESTIONNAIRES**

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The attorney questionnaire was printed on both sides of 8½" x 14" paper. The size was changed here to fit the rest of the report.

**Attorney 29**

**Non-attorney 33**

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	Excellent	Good	Fair	Poor	Very Poor	Does Not Apply
(13) Acting appropriately to resolve problems (such as outbursts, inappropriate behavior, lateness) arising during the proceedings . . . . .	0	0	0	0	0	0
(14) Assisting people in narrowing the issues . . . . .	0	0	0	0	0	0
(15) Skillfully handling settlement conferences and mediations . . . . .	0	0	0	0	0	0
(16) Knowing relevant substantive law . . . . .	0	0	0	0	0	0
(17) Knowing rules of procedure . . . . .	0	0	0	0	0	0
(18) Knowing rules of evidence . . . . .	0	0	0	0	0	0
(19) Basing decisions on evidence, testimony, and law . . . . .	0	0	0	0	0	0
(20) Writing understandable and thorough decisions . . . . .	0	0	0	0	0	0
(21) Issuing written findings, conclusions, and/or orders in a timely manner	0	0	0	0	0	0

## Written Comments

*Your comments will be typed up as you have written them before they are given to the judge. Profanities or personal attacks will be removed. Please avoid mentioning any case specifics that might identify you. Your responses to this questionnaire will not be considered formal complaints.*

(22) What are the positive aspects of this judge's attitude and behavior toward all people in the courtroom?

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(23) What can this judge do to improve his or her attitude and behavior toward all people in the courtroom?

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(24) What are this judge's strengths in managing and handling the proceedings? \_\_\_\_\_

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(25) What can this judge do to improve his or her management and handling of proceedings? \_\_\_\_\_

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(26) What are the strengths of this judge's legal knowledge and ability? \_\_\_\_\_

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(27) What areas of this judge's legal knowledge and ability need improvement? \_\_\_\_\_

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(28) Were there any incidents during the proceedings that showed the judge's fairness? If yes, please explain without mentioning any case specifics.

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(29) Were there any incidents during the proceedings that showed the judge's bias or unfairness? If yes, please explain without mentioning any case specifics.

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(30) Do you have any additional comments? \_\_\_\_\_

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**Thank you for completing this survey. Please return it to the Minnesota Department of Administration-  
Management Analysis Division, 203 Administration Building, St. Paul, MN 55155.**

# OFFICE OF ADMINISTRATIVE HEARINGS JUDICIAL DEVELOPMENT PROGRAM 1998-1999

## Evaluation of Judge

*The judicial development program is designed to improve the performance of OAH judges. Please complete this questionnaire for the above-named judge based on your recent appearance before him or her. If you have questions about this program, call Carol Trudeau, Special Assistant to the Chief Administrative Law Judge, 612-349-2527.*

*Your responses to this questionnaire will be used only to help judges develop their skills. This questionnaire has no code that identifies you. All replies will remain anonymous. To further ensure anonymity, results will be tabulated by the Minnesota Department of Administration. Please return your survey within ten days in the provided envelope.*

*Circles should be COMPLETELY FILLED and mistakes COMPLETELY ERASED. Choose only one response per question. Do not use a felt tip pen.*

Please rate the above-named judge's performance in the following areas. The term "proceedings" includes hearings, motions, pre-trials, administrative and settlement conferences, mediations, and rule hearings.

		Excellent	Good	Fair	Poor	Very Poor	Does Not Apply
		⌋	⌋	⌋	⌋	⌋	⌋
(1) Showing respect to you . . . . .	0	0	0	0	0	0	0
(2) Showing patience with you . . . . .	0	0	0	0	0	0	0
(3) Promoting a sense of fairness . . . . .	0	0	0	0	0	0	0
(4) Being open-minded throughout the proceedings . . . . .	0	0	0	0	0	0	0
(5) Remaining even-tempered throughout the proceedings . . . . .	0	0	0	0	0	0	0
(6) Starting the proceedings on time . . . . .	0	0	0	0	0	0	0
(7) Being familiar with the issues of the case . . . . .	0	0	0	0	0	0	0
(8) Paying attention during the proceedings . . . . .	0	0	0	0	0	0	0
(9) Giving you or your attorney opportunities to speak . . . . .	0	0	0	0	0	0	0
(10) Preventing participants from making lengthy, repetitive statements ("rambling"). . . . .	0	0	0	0	0	0	0
(11) Maintaining appropriate control over who speaks and when . . . . .	0	0	0	0	0	0	0
(12) Being decisive throughout the proceedings, such as when objections are raised . . . . .	0	0	0	0	0	0	0
(13) Acting appropriately to resolve problems (such as outbursts, inappropriate behavior, lateness) arising during the proceedings . . . . .	0	0	0	0	0	0	0
(14) Assisting people in narrowing the issues . . . . .	0	0	0	0	0	0	0
(15) Skillfully handling settlement conferences and mediations . . . . .	0	0	0	0	0	0	0
(16) Issuing written findings, conclusions, and/or orders in a timely manner . . . . .	0	0	0	0	0	0	0

(Over)

## Written Comments

*Your comments will be typed up as you have written them before they are given to the judge. Profanities or personal attacks will be removed. Please avoid mentioning any case specifics that might identify you. Your responses to this questionnaire will not be considered formal complaints.*

(17) What are the positive aspects of this judge's attitude and behavior toward all people in the courtroom?

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(18) What can this judge do to improve his or her attitude and behavior toward all people in the courtroom?

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(19) What are this judge's strengths in managing and handling the proceedings? \_\_\_\_\_

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(20) What can this judge do to improve his or her management and handling of proceedings? \_\_\_\_\_

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(21) Were there any incidents during the proceedings that showed the judge's fairness? If yes, please explain without mentioning any case specifics.

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(22) Were there any incidents during the proceedings that showed the judge's bias or unfairness? If yes, please explain without mentioning any case specifics.

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(23) Do you have any additional comments? \_\_\_\_\_

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**Thank you for completing this survey. Please return it to the Minnesota Department of Administration-  
Management Analysis Division, 203 Administration Building, St. Paul, MN 55155.**