



INDUSTRIAL CLAIM APPEALS OFFICE

2007 PERFORMANCE SURVEY RESULTS

November 1, 2007 through December 31, 2007

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March 10, 2008

I am pleased to report the results of the 2007 performance survey conducted concerning the Industrial Claim Appeals Office and the Industrial Claim Appeals Panel. The survey was conducted between November 1, 2007 and December 31, 2007. Participants were asked to base their responses on their experiences over the previous 12-month period.

Invitations to participate in the survey were distributed to individuals whose e-mail addresses had been provided to the Industrial Claim Appeals Office, the Division of Workers' Compensation, or the Division of Employment. A total of 554 invitations were sent via e-mail. The survey was conducted electronically and the results compiled by SurveyMonkey.com.

The response rate was approximately 26%. 146 individuals participated in some portion of the survey and 107 completed it. Those participating included 47 individuals identifying themselves as attorneys or other professional representatives; 31 identifying themselves as CDLE representatives or employees; 25 identifying themselves as judges, administrative law judges, or hearing officers; 18 identifying themselves as employees of insurance companies, adjusting agencies, self-insurance or public entity pools; 8 identifying themselves as legal assistants, law clerks, or other legal support staff members; 5 identifying themselves as non-legal administrative support staff; and 13 identifying themselves as "other." Individual employers and claimants were invited to complete a different

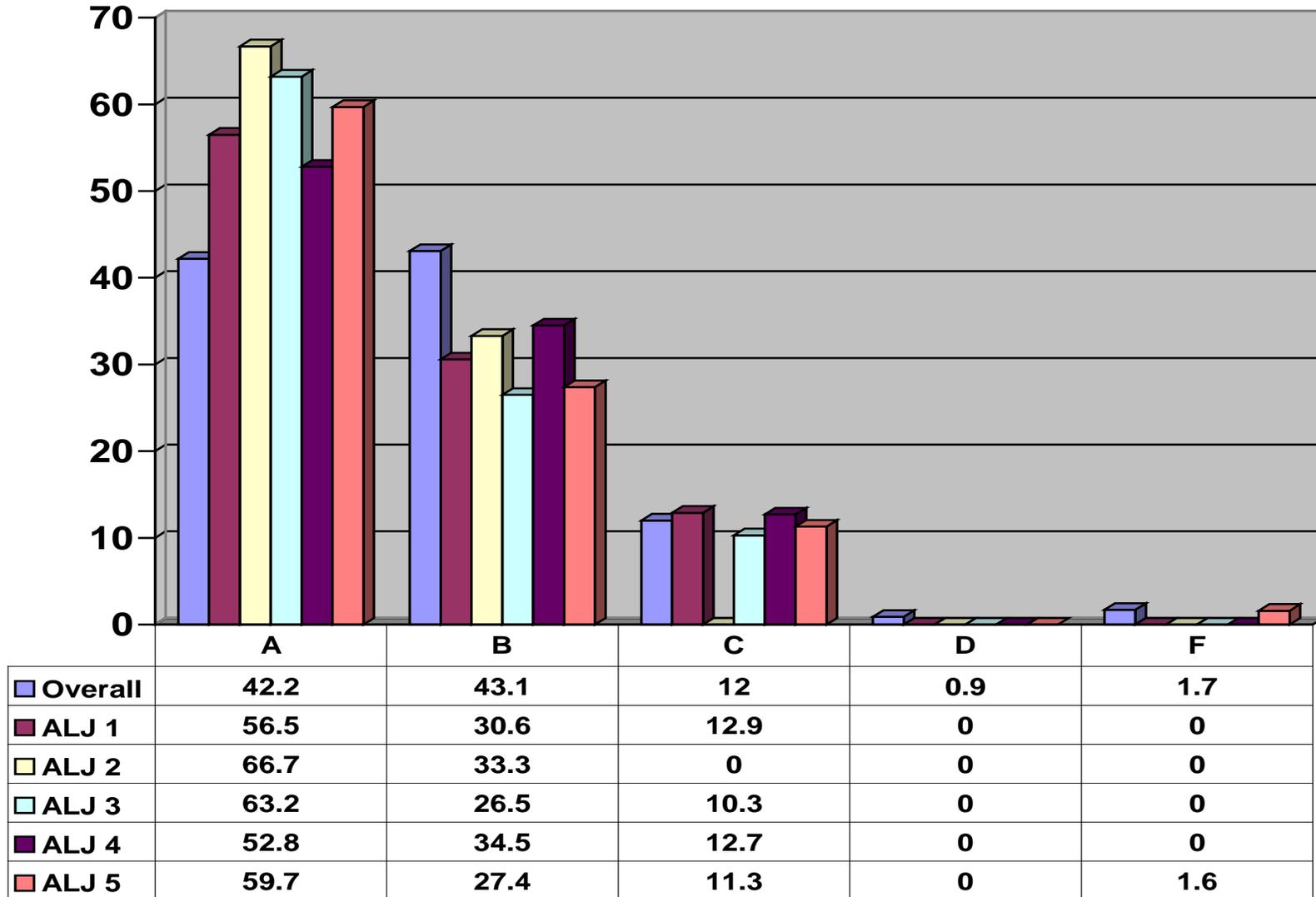
survey, as this survey was directed to those having professional and recurring contact with the Industrial Claim Appeals Office and Panel.

The survey addressed several performance areas of the Panel as a whole and the individual Panel members, as well as the performance of our support staff and the usefulness of our instructional resources. In addition, the communication preferences of participants were polled. The enclosed graphs illustrate both the percentage of responses in each performance area and the average scores. Also included are some of the narrative comments received and, in some cases, a response from the Industrial Claim Appeals Office.

On behalf of the Industrial Claim Appeals Office, I thank all who took the time to participate in this survey. We value your input. If you have questions about the survey results, please feel free to contact me at (303) 318-8133.

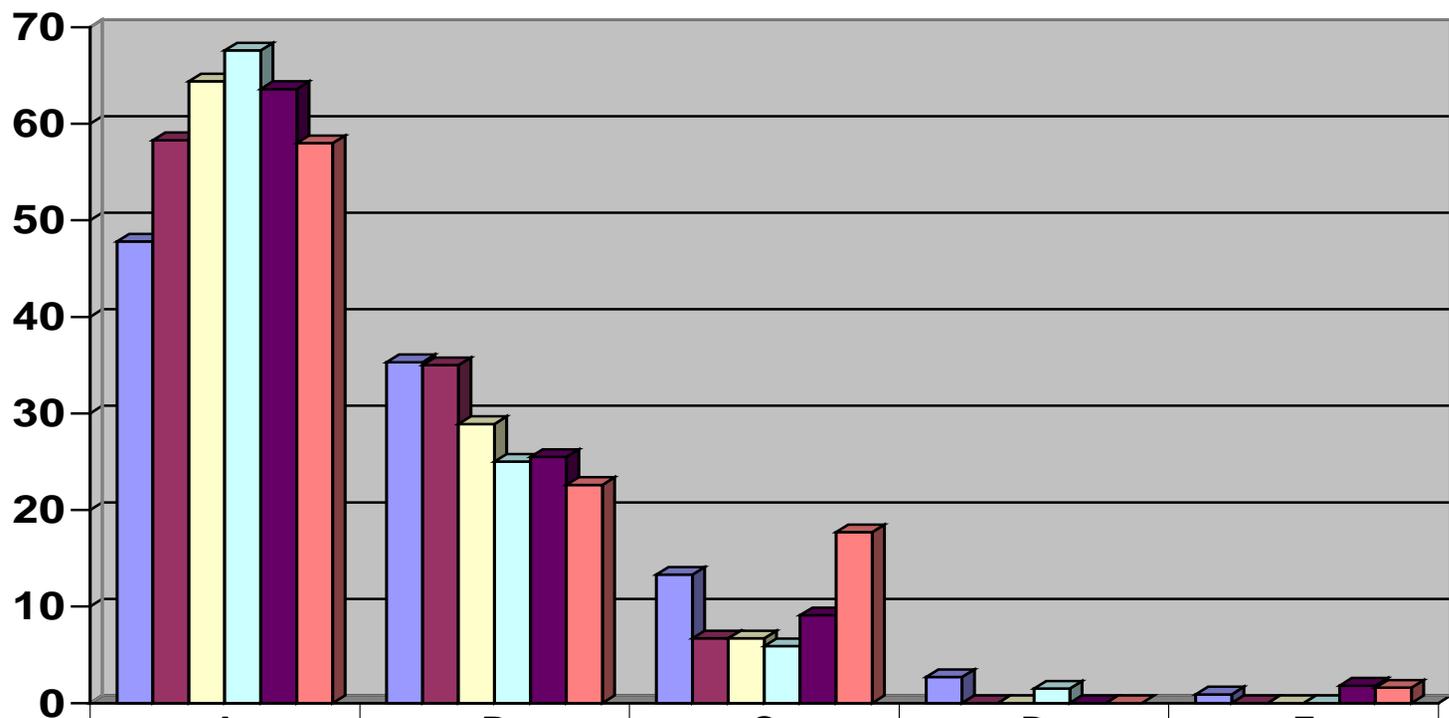
/s/ Dona Halsey

Decisions are Clearly Written (%)*



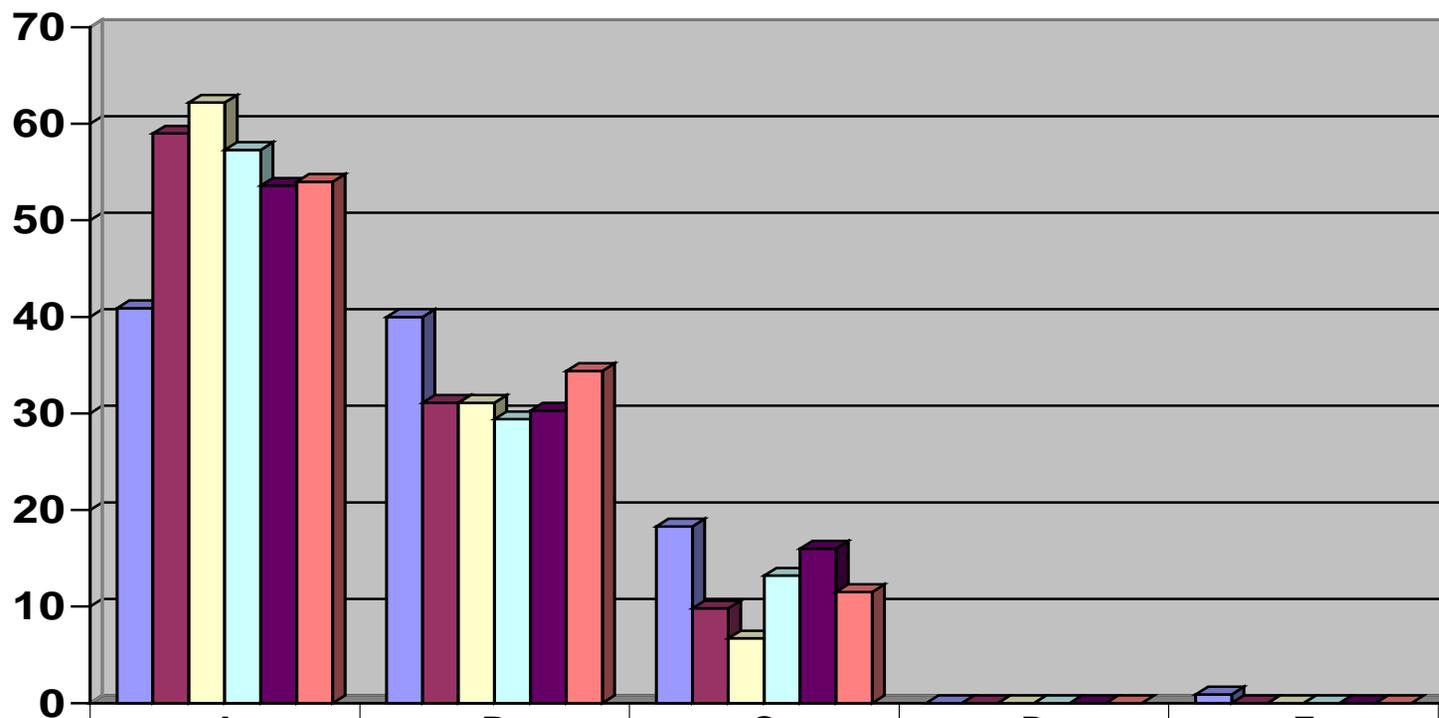
*Respondents graded performance areas from “A” to “F” where “A” is excellent and “F” is failing. Percentages are based on responses selecting a letter grade and do not include selections of “NR” for “no response.”

Decisions are Thorough (%)



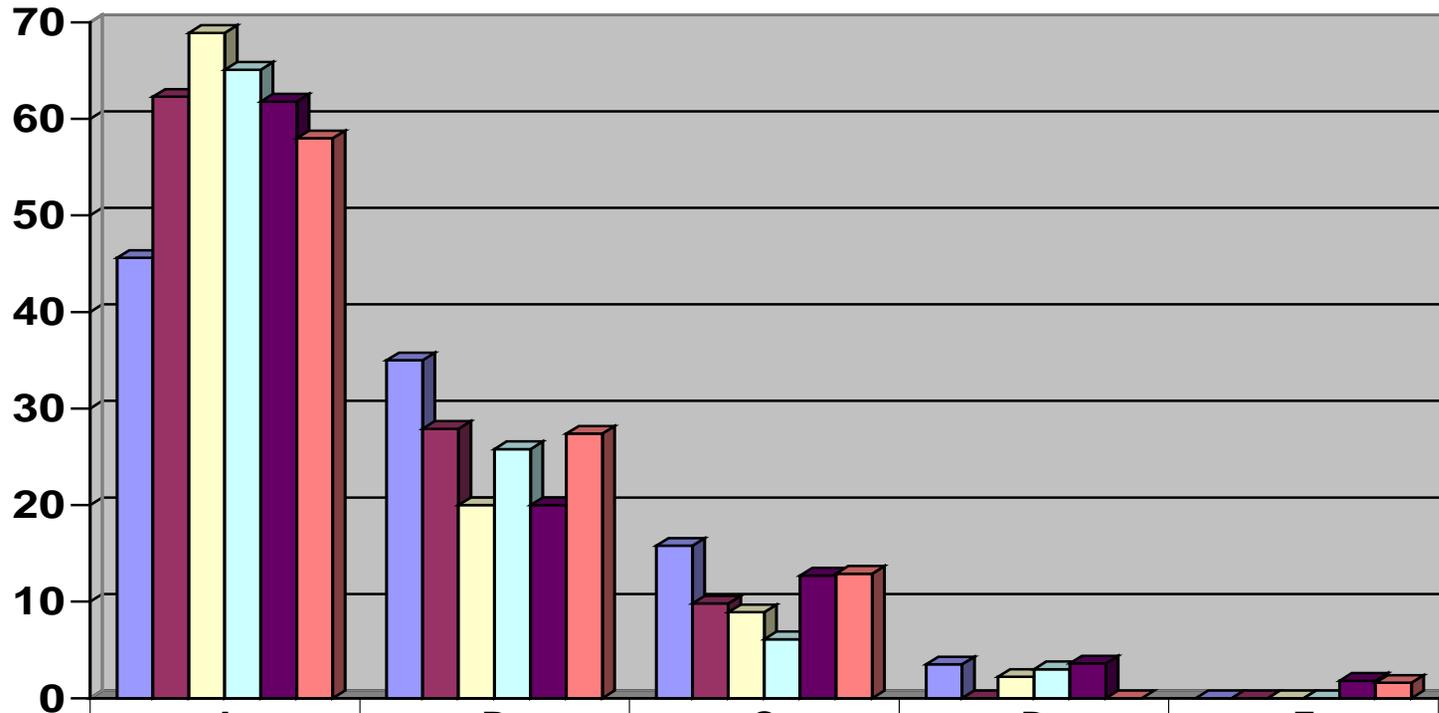
	A	B	C	D	F
Overall	47.8	35.3	13.3	2.7	0.9
ALJ 1	58.3	35	6.7	0	0
ALJ 2	64.4	28.9	6.7	0	0
ALJ 3	67.6	25	5.9	1.5	0
ALJ 4	63.6	25.5	9.1	0	1.8
ALJ 5	58	22.6	17.7	0	1.6

Basis of Decisions Adequately Explained (%)



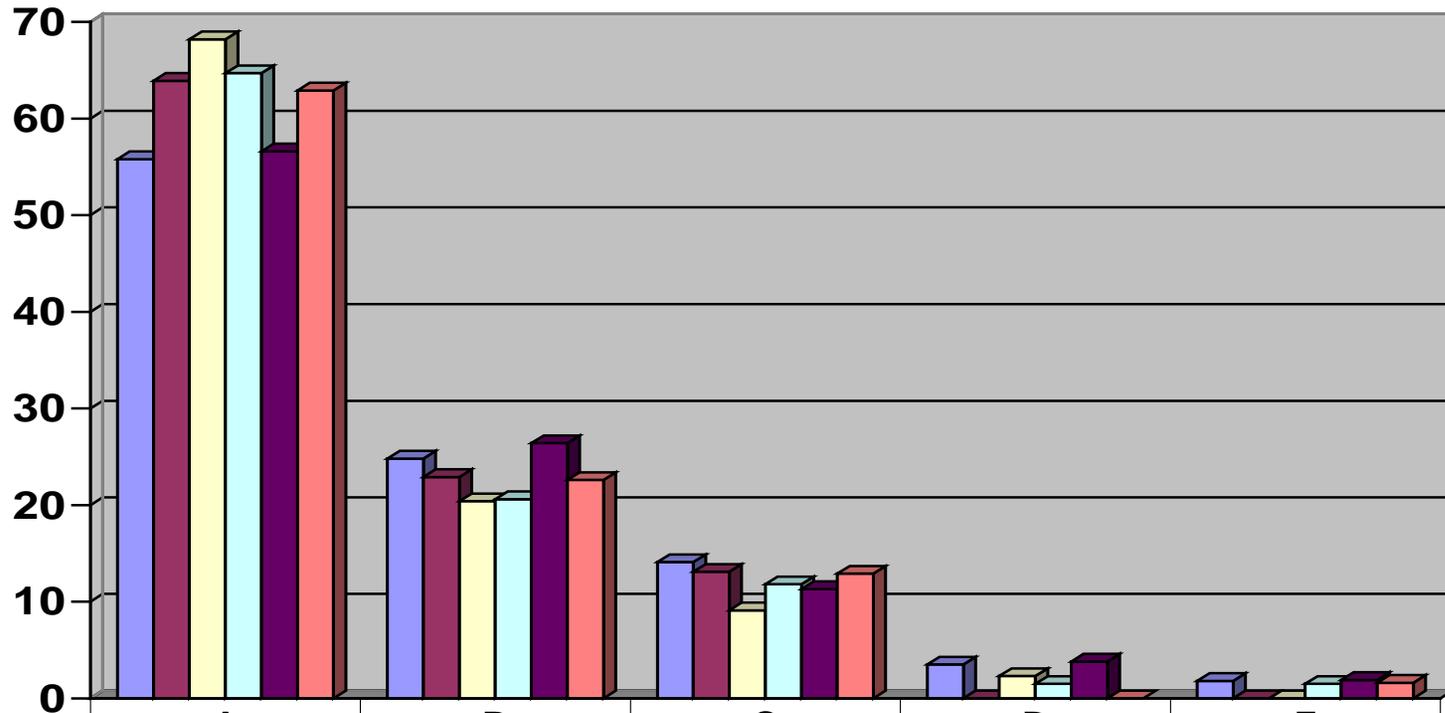
	A	B	C	D	F
Overall	40.9	40	18.3	0	0.9
ALJ 1	59	31.1	9.8	0	0
ALJ 2	62.2	31.1	6.7	0	0
ALJ 3	57.3	29.4	13.2	0	0
ALJ 4	53.6	30.3	16	0	0
ALJ 5	54	34.4	11.5	0	0

Decisions are Reasoned (%)



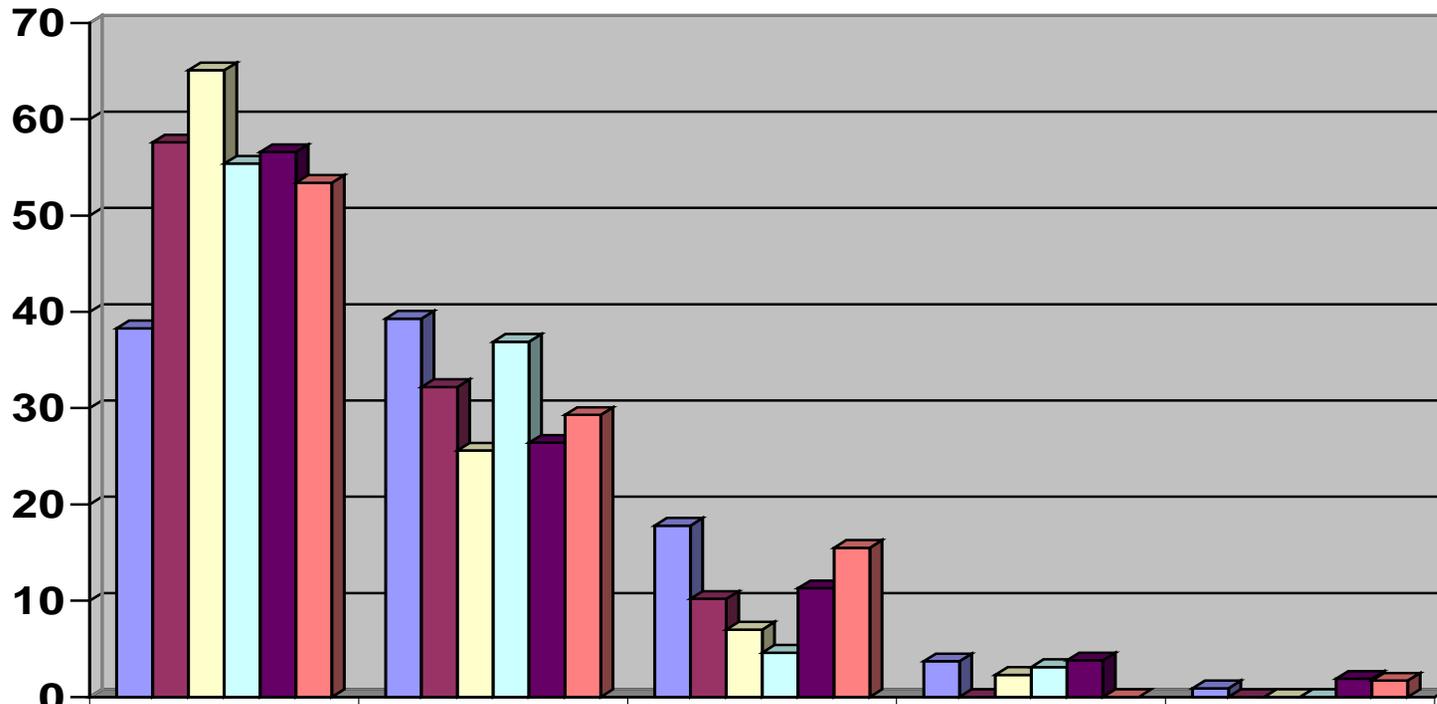
	A	B	C	D	F
Overall	45.6	35	15.8	3.5	0
ALJ 1	62.3	27.9	9.8	0	0
ALJ 2	68.9	20	8.9	2.2	0
ALJ 3	65.1	25.8	6.1	3	0
ALJ 4	61.8	20	12.7	3.6	1.8
ALJ 5	58	27.4	12.9	0	1.6

Decisions Reflect Impartiality (%)*



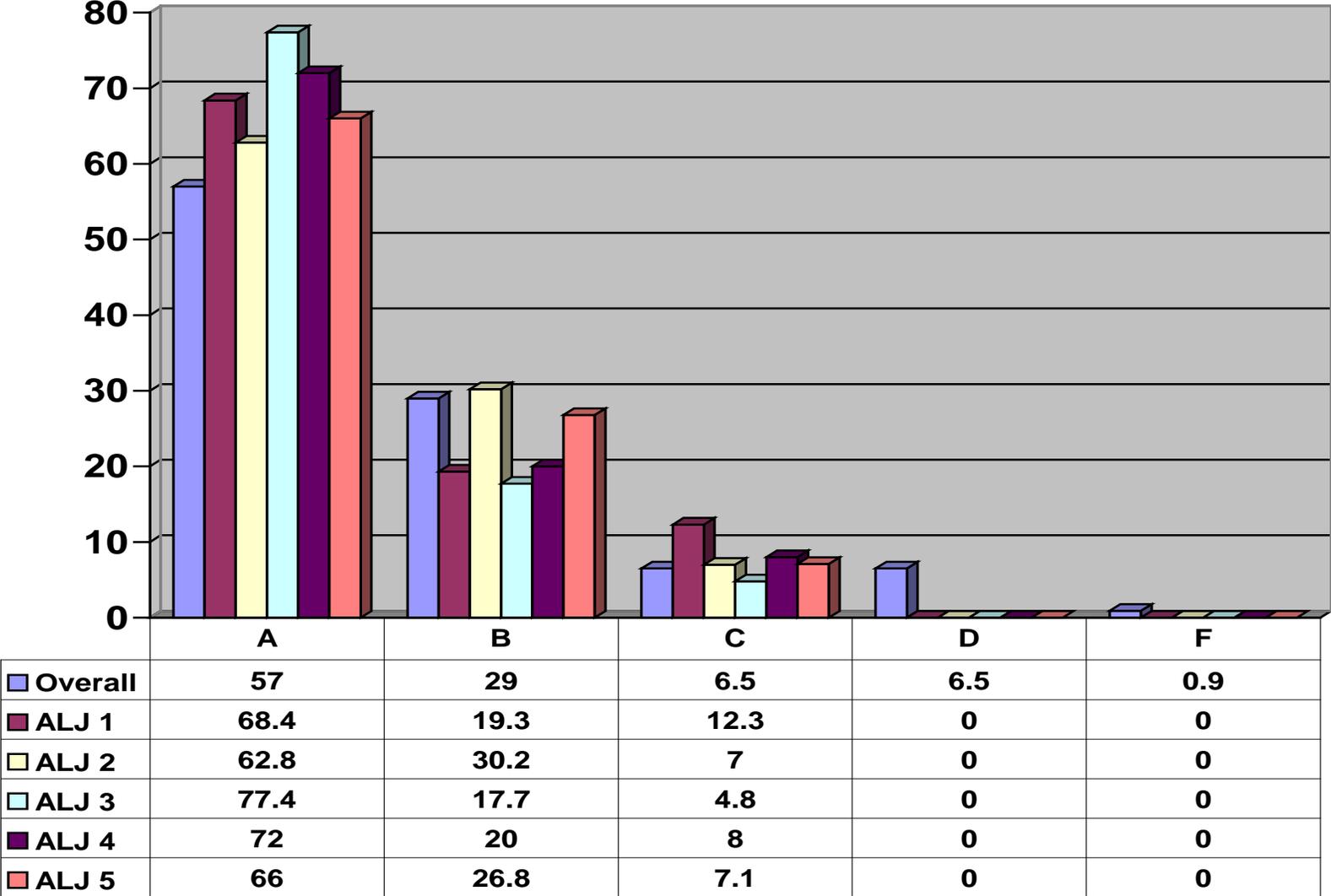
	A	B	C	D	F
Overall	55.8	24.8	14.1	3.5	1.8
ALJ 1	63.9	22.9	13.1	0	0
ALJ 2	68.2	20.4	9.1	2.3	0
ALJ 3	64.7	20.6	11.8	1.5	1.5
ALJ 4	56.6	26.4	11.3	3.8	1.9
ALJ 5	62.9	22.6	12.9	0	1.6

Decisions Consistent with Previous Decisions (%)

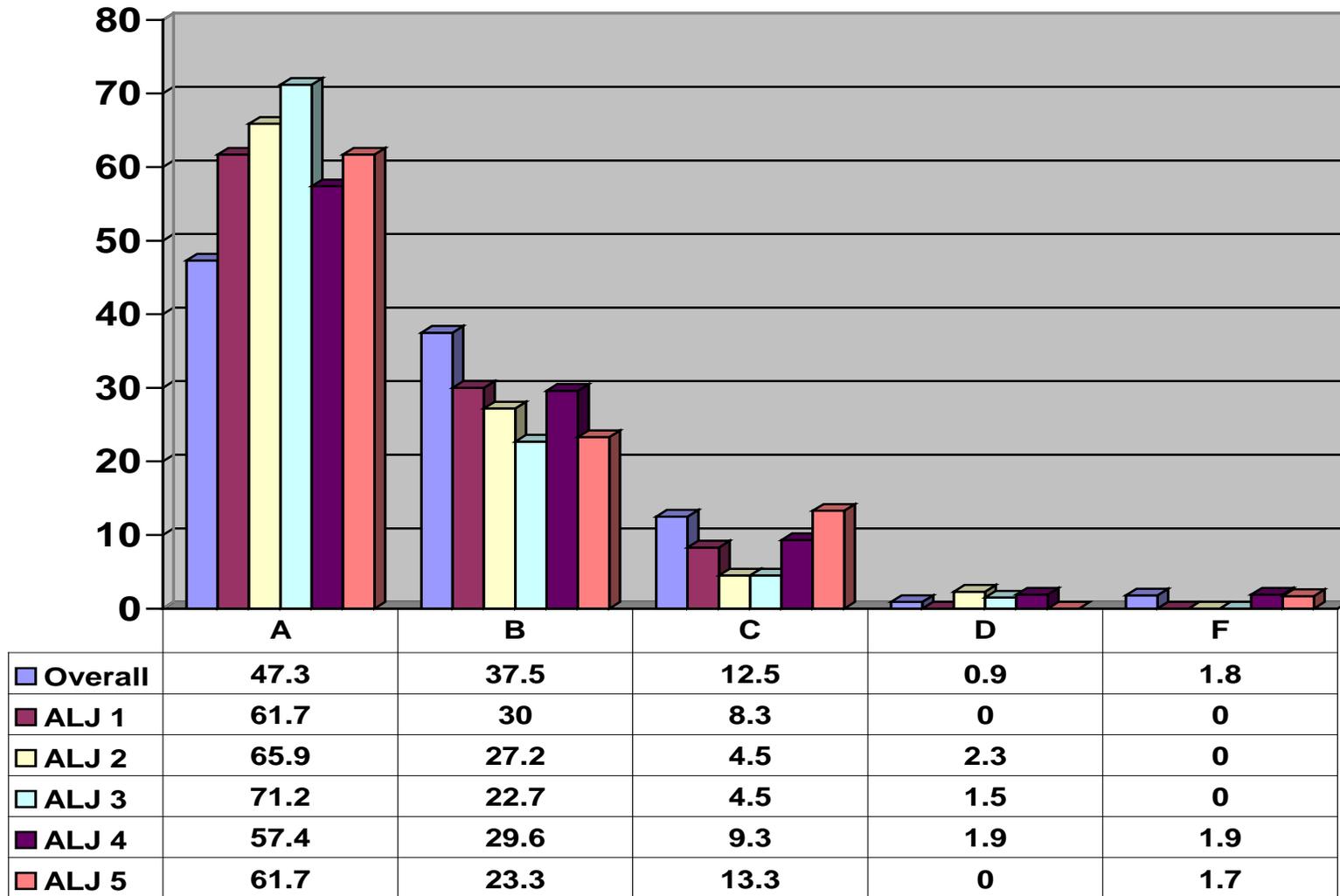


	A	B	C	D	F
Overall	38.3	39.3	17.8	3.7	0.9
ALJ 1	57.6	32.2	10.2	0	0
ALJ 2	65.1	25.6	7	2.3	0
ALJ 3	55.4	36.9	4.6	3.1	0
ALJ 4	56.6	26.4	11.3	3.8	1.9
ALJ 5	53.4	29.3	15.5	0	1.7

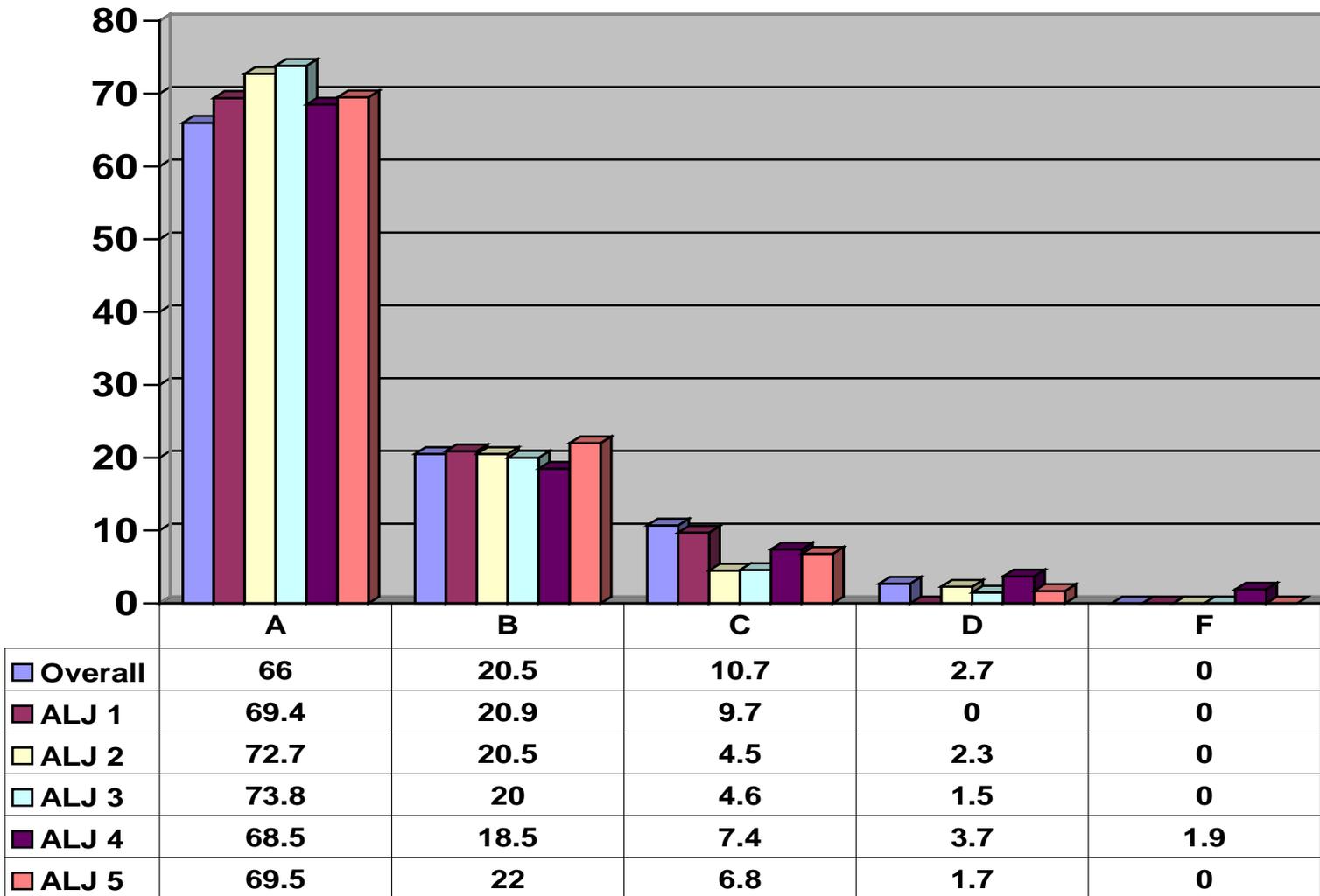
Decisions Issued in a Timely Manner (%)



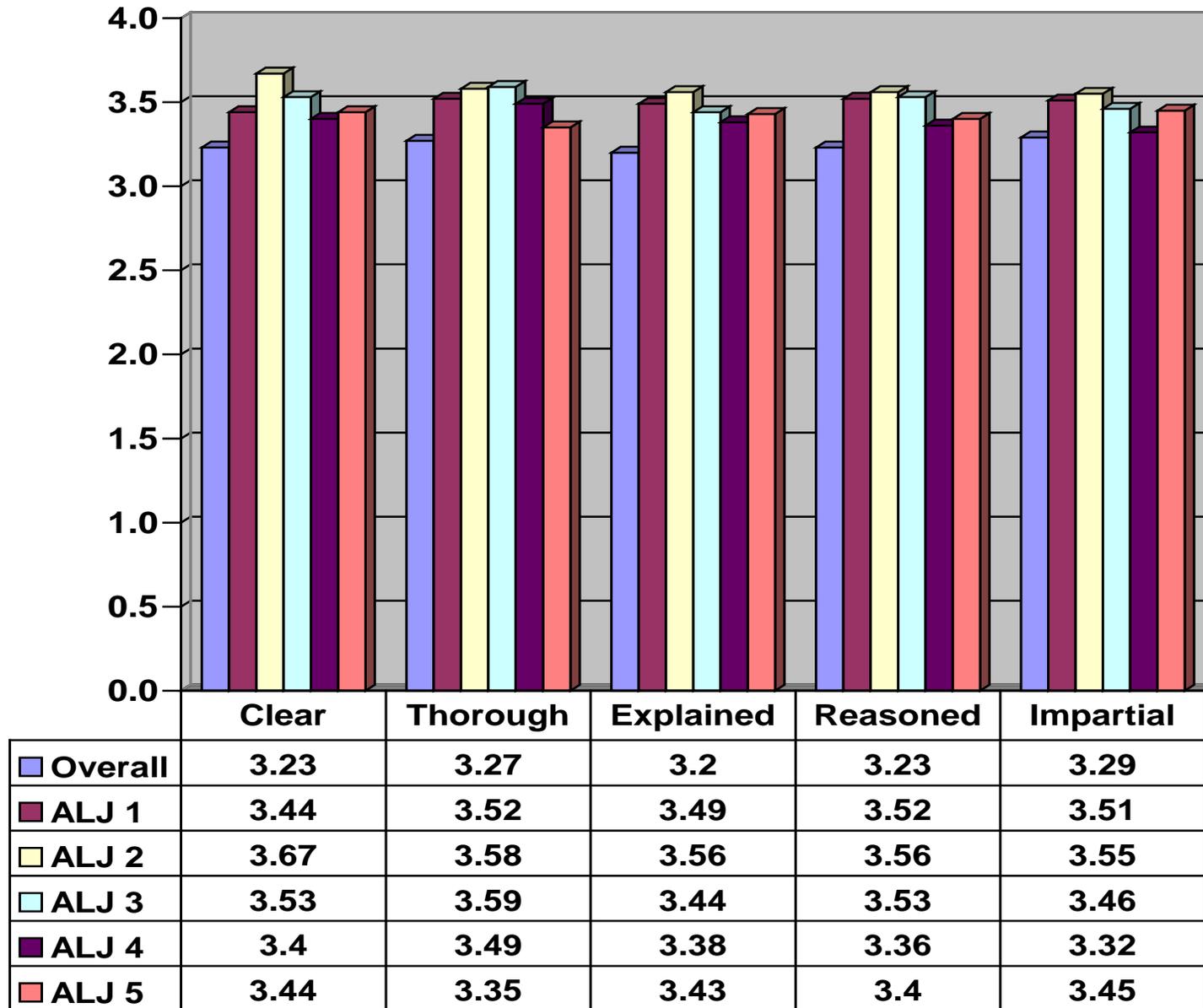
Decisions Refrain from Addressing Unnecessary Issues (%)



Decisions Reflect Appropriate Judicial Demeanor (%)

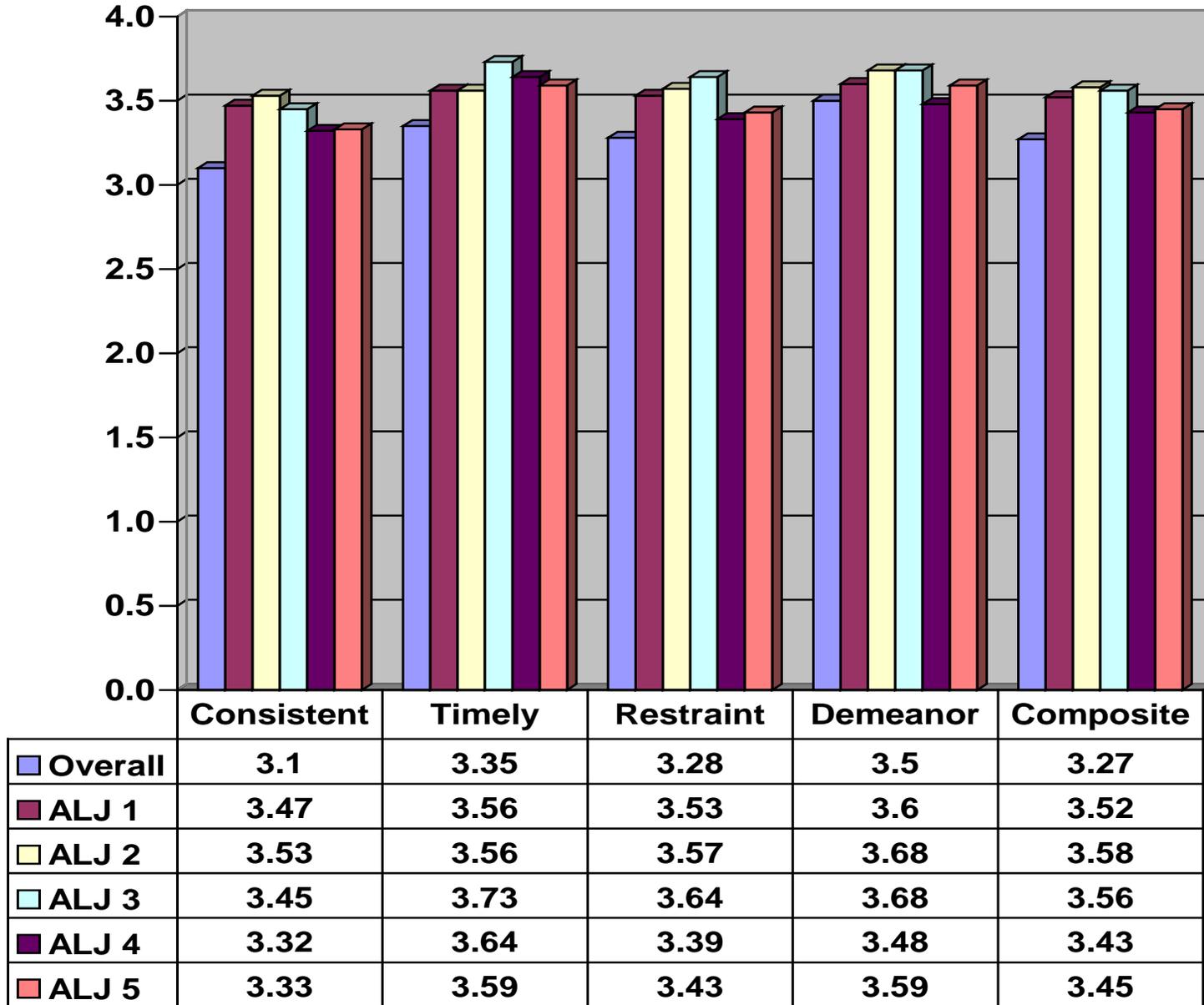


Average Scores*

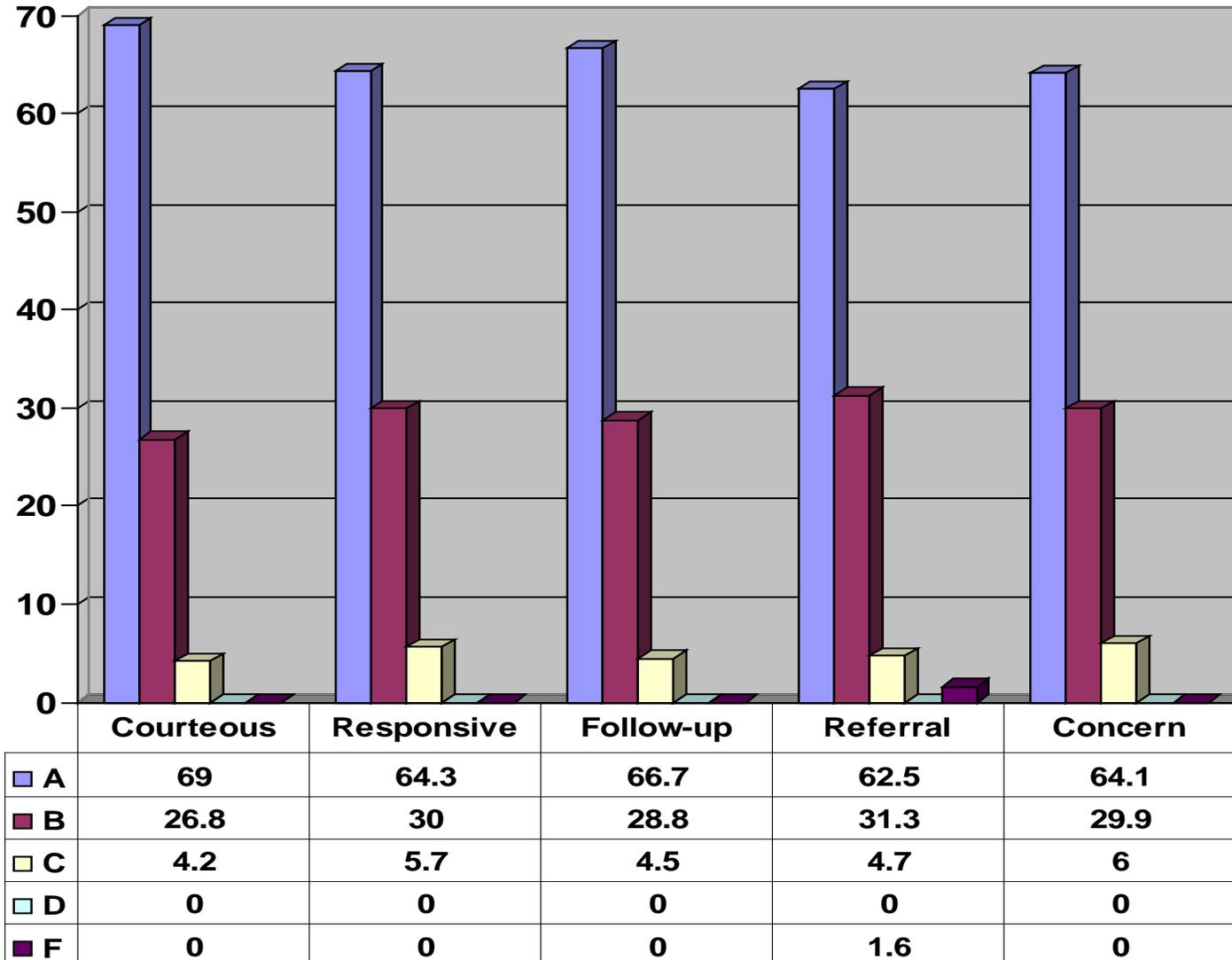


*Based on a grading scale of “A” to “F”, where A = 4; B = 3; C = 2; D = 1; and F = 0.

Average Scores (continued)

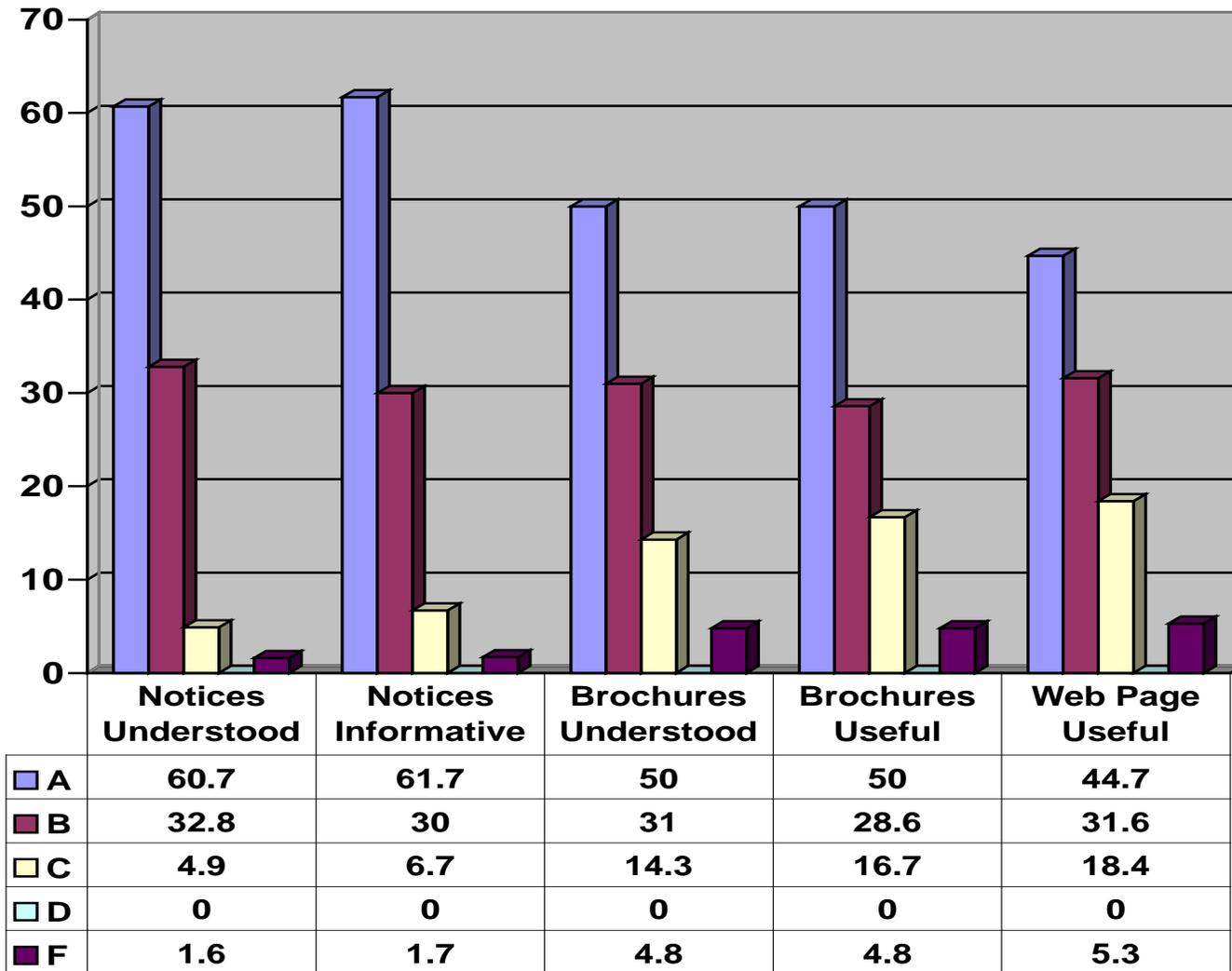


Support Staff Service (%)*



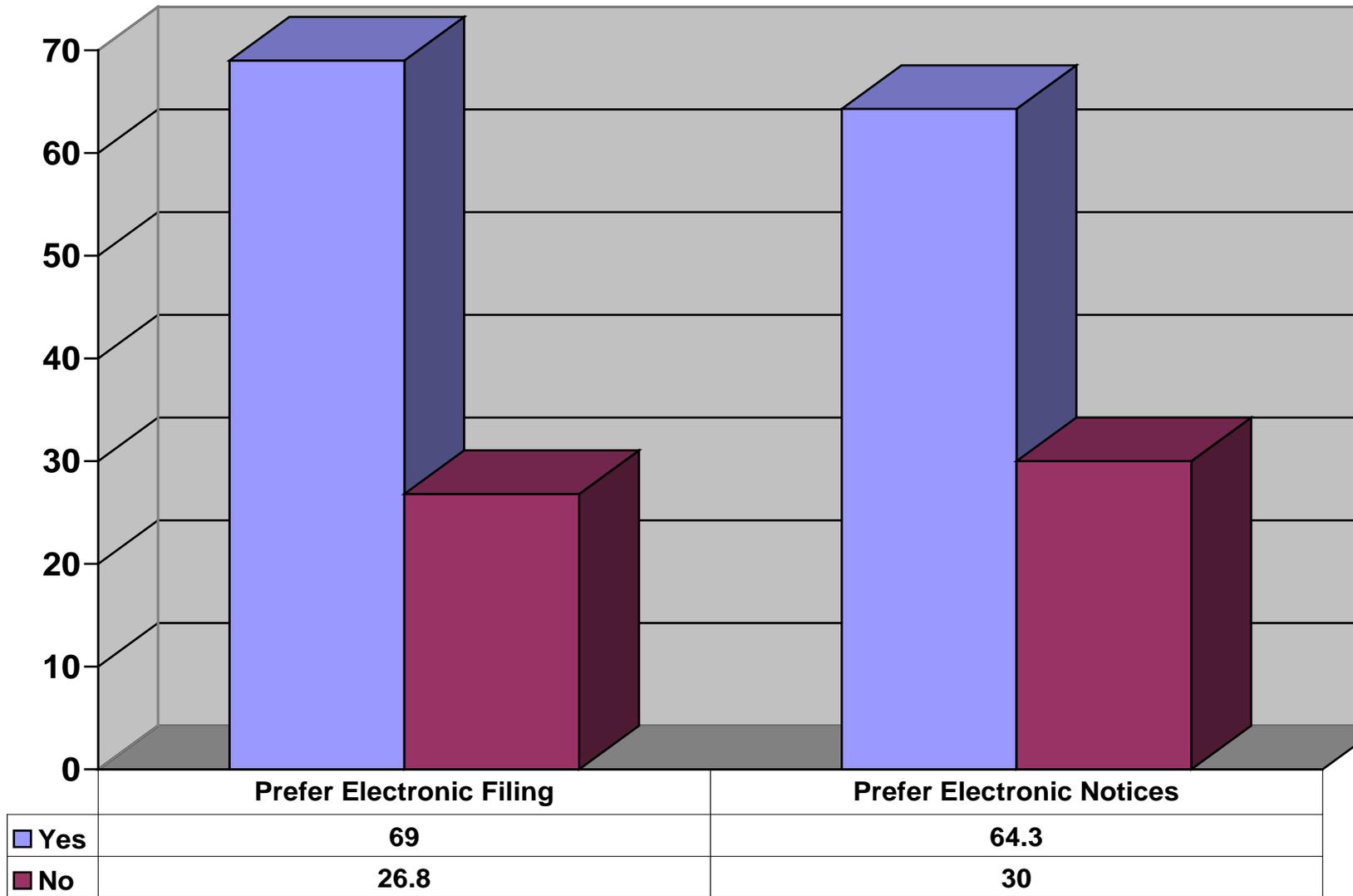
Average Numerical Scores	3.65	3.59	3.62	3.59	3.58
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ICAO Publications and Resources (%)



Average Numerical Scores	3.51	3.50	3.21	3.19	3.11
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Communication Preferences (%)*



Sample of Narrative Comments

“The ICAP opinions rival the Court of Appeals in . . . workers’ compensation law . . .”

“Decisions are good reflections of law and understanding.”

“I am continually impressed by the thorough, fair, and scholarly treatment that the ICAP is able to give the numerous workers’ compensation cases that it must address so quickly. Even when I disagree with an outcome or with the reasoning in a decision, I am struck by the effort . . . to reach principled holdings . . .”

“The quality of the ICAO’s work product is generally quite good, and it appears to operate efficiently given the constraints of a high-volume caseload.”

“I think the current crew of ALJs dealing with workers’ compensation issues are some of the most well-versed and credible. The workers’ compensation system is greatly benefited through the clarity of their review.”

“ICAP typically issues excellent opinions . The opinions are clearly written, well-reasoned and consistent with relevant case law.

“You all are terrific. Decisions are well written and instructive.”

“The quality of writing of ICAO decisions has deteriorated greatly over the past few years. Many decisions look like they have not been proofread and/or were hastily written. In many decisions “claimant” has been erroneously indicated in place of “respondent.” Occasional orders contain sarcasm which is inappropriate.”

“The only concern that I would like to raise is that it appears the social security number and docket number printed on the decisions should be verified as correct before the decisions or other forms are mailed”

Response: Prior to the survey, the Panel had become aware of an increase in the number of clerical errors in its decisions. An additional level of proofreading has been implemented, and the Panel believes that the incidence of errors has significantly decreased.

As to the quality of writing, please keep in mind that three new ALJs joined the Panel over a period of 13 months. Naturally, this resulted in a period of adjustment, during which there was a variance in writing habits and styles. Usage and style has been addressed and a manual is in development.

The Panel agrees that sarcasm is inappropriate and is unaware of any sarcasm in its orders. The Panel places a high priority on maintaining a judicial demeanor that is respectful of all parties and is proud that 86% of respondents graded the Panel “A” or “B” in this category.

“Just once in a while I’d like you to overrule the ALJs on their facts – they’re NOT always clear or right! And the law allows you to do it, but it always has to be a higher court that does it and not the ICAO.”

“[I would like to see] ICAO taking a real look at the legal issues presented and not rubberstamping decisions based on the substantial evidence standard. There is too much effort spent trying to characterize all issues as factual only when they really are not.”

“The current ICAO will reach for straws to uphold the ALJ even if the ALJ should not be affirmed in errors of law or lack of evidence.”

Response: Unlike the Industrial Commission that preceded the Industrial Claim Appeals Office, the Panel does not have fact-finding authority. In workers’ compensation cases, the Panel is bound by factual findings that are supported by substantial evidence. The substantial evidence standard requires the Panel to disregard conflicting evidence that, if credited, could support different findings. Key decisions of the Colorado Court of Appeals support the Panel’s interpretation that it has extremely limited authority in reviewing factual findings. Any alteration of that authority would need to come from the General Assembly.

Theoretically, the “contrary to the weight of the evidence” standard applicable to unemployment insurance cases gives the Panel limited fact-finding authority. However, in application, the Panel has found that the vast majority of appeal records contain simple conflicting evidence and the credibility determinations made by hearing officers preclude the Panel from disturbing their findings.

A review of the workers’ compensation data maintained by the ICAO indicates that the Panel affirmed the ALJ an average of 83% between July 1998 and June 2003, and an average of 84% from July 2003 through February 2008. Although the data indicates a spike to 89% between

July 2004 and June 2005, the overall affirmance rate has remained in the same range over a prolonged period.

In unemployment insurance cases, ICAO records show that the hearing officer was affirmed in 87% of appeals between July 1998 and June 2003, and in 91% of cases between July 2003 through February 2008. The Panel attributes the increased affirmance rate in recent years to the aggressive continuing education and training programs undertaken by the Division of Employment.

“The ICAP is very professional and much more sophisticated than many administrative bodies. I have no complaints.”

“I appreciate seeing some dissents. That shows independence and is reassuring.”

“I sometimes think the panels fail to address issues which are briefed by the parties and that its failure precludes the parties from addressing those issues in the court of appeals.”

Response: The Panel endeavors to address all significant issues raised in a party’s brief, as well as those raised in the appeal or petition for review. In the rare instance that the Panel fails to do so, the Panel is aware of no authority that precludes parties from raising the issue with the Court of Appeals or that precludes a party from arguing that the Panel erred in failing to address an issue.

“I feel this panel should have an insurance adjuster Although decision[s] are based on law, the whole story is not reviewed on all 4 sides of the accident. [The] Panel should have [a] nurse that is not bias[ed], adjuster [that is] not bias[ed]”

Response: Section 8-1-102(1), C.R.S. does not require that the Panel be comprised of individuals from diverse political backgrounds or otherwise address the qualifications of the Panel members. However, this statute places the Panel members under the state personnel system. Pursuant to the job evaluation and classification scheme of the state personnel system, the duties performed by the Panel were determined to be in the Administrative Law Judge class. The minimum qualifications for that class require a law degree and five years of experience practicing law. Although an insurance adjuster or a nurse theoretically could meet these qualifications, it would seem to be a rare instance.

“It sometimes takes several months from the time that the file was submitted to the ALJs for me to get a decision back. This can sometimes result in a large overpayment for the claimant if the ICAO overturns the hearing officer’s allowed decision.”

Response: For many years, the Panel has been subject to time lapse and case aging standards imposed by the U.S. Department of Labor. In the recent past, these standards consisted of set percentages for resolving appeals within set time frames. However, the standards did not impose a time requirement for resolving 100% of the workload and some cases were not subject to the standards at all. Consequently, in attempting to meet the standard, some appeals involving more difficult issues or unregulated cases fell behind. However, a new standard has been adopted which measures average of pending cases. This standard promotes a “first-in, first-out” process which discourages the Panel from allowing any case to lag behind.

“Please, please, please stop using huge long paragraphs to set out the facts. Those paragraphs are impossible to read and contain a plethora of unnecessary facts. Please stop using generic bloc statements of the law. Please address the standard of review for each issue.”

Response: The Panel recognizes the ideal of limiting its recitation to the dispositive facts. However, we also are mindful that our workers’ compensation orders are distributed to a diverse audience, most of whom do not have access to the ALJ’s order. In order for those individuals to understand the context, it sometimes is necessary to detail more of the ALJ’s findings. Nevertheless, the Panel will continue to attempt to set out the facts as concisely as possible and to articulate the standard of review for each issue.

“Some decisions are very well written. The ones I favor are those which have the reader in mind and clearly (and simply) outline the writer’s rationale for arriving at a decision – providing a step-by-step analysis. In reading these, you need not be an attorney to track the logic. I appreciate that and believe these will be the decisions that will hold up on appeal. They are broken down well and take an everyman approach. I particularly appreciate inclusion of a dissenting opinion as it gives the reader a fuller appreciation of the complexity of the issue, demonstrating the fact that reasonable minds can disagree, and that ICAP is taking great care to give the issues the careful attention and analysis they deserve. It’s very instructive to claims people.”

“In some circumstances . . . the remand decisions can be a little confusing. [Sometimes] it is hard to determine exactly what is being stated in a remand order. We receive phone calls from claimants, employers and attorneys wanting us to explain the remand orders. When case are being remanded for the hearing officer to hold a new hearing it can be difficult to determine what action is being requested. It is hard to determine if new witnesses should be allowed or new documents can or cannot be entered into the record.

Response: The Panel attempts to be as precise as possible in articulating what is to occur on remand. However, in some instances, the Panel does not wish to interfere with the discretion of the ALJ or hearing officer. To avoid confusion in the future, the Panel will consider indicating when the ALJ or hearing officer is free to exercise his or her own judgment in determining whether or not to hold an additional hearing.

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“ICAO [support] staff is always very helpful and responsive.”

“I have found the support staff to be very helpful and courteous. I speak to them almost on a daily basis and have a good working relationship with [them].”

“Great group.”

“The notices I have seen (not very many)” seem a bit confusing as to deadlines (what about weekends and holidays?). Also, a notice we received said there was an enclosure of the other party’s brief, but there was not brief enclosed.”

Response: ICAO forms are expressed in terms of “calendar” days. This includes weekends and holidays unless the last day of the period is a weekend or legal holiday, in which case the due date is automatically extended to the next business day. See § 8-70-103(5), C.R.S. 2007; see also § 2-4-108(2), C.R.S. 2007.

Occasionally, ICAO staff may neglect to enclose the appealing party’s brief. However, often we have found that when a party has not received a brief, it is because their copy went to their representative (we only send one copy per side). If this is not the case, please contact our office at (303) 318-8133, and we will be happy to correct this immediately. Upon request, we also can extend the due date for filing a response brief if necessary.

“You have brochures and a web site?”

Response: Yes, we do! Please contact our office for a copy of “Appealing the Hearing Officer’s Decision” (pertaining the unemployment insurance cases), and forms for appealing an order of the Panel to the Colorado Court of Appeals. Also, visit our web site at <http://www.coworkforce.com/ica/default.asp>. There you will find an on-line reference library for unemployment insurance cases, as well as links to the Colorado Employment Security Act (unemployment insurance statutes) and the Regulations Concerning Employment Security. For workers’ compensation cases, links are available to the Workers’ Compensation Act of Colorado, the Workers’ Compensation Rules of Procedure, the Procedural Rules of the Office of Administrative Courts; the Rules governing Issuance of Self-Insurance Permits, and the Rules governing Issuance of Cost Containment Certificates.