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THIRD ANNUAL REPORT

This report is submitted to the Administrative Procedure Committee and the Administration Commission in compliance with the requirement of Section 120.70, F.S., which states:

"Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedure Committee and the Administration Commission, including at least the following information:

- (1) A summary of the extent and effect of agencies' utilization of hearing officers, court reporters, and other personnel in proceedings under this act.
- (2) Recommendations for change or improvement in the Administrative Procedure Act or any agency's practice or policy with respect thereto."

Calendar year 1976 was the first full year the Division of Administrative Hearings operated at its offices at 101 Collins Building, Tallahassee, Florida. During this year 2,276 requests were submitted to this office. Hearing officers of this division conducted hearings in virtually every county within the state of Florida. Practically all agencies at one time or another appeared before hearing officers of this division.

In addition to the above case load, this division has responded to numerous legal questions from both state agencies and the general public concerning appropriate practices and procedures under the Administrative Procedure Act. A breakdown of the requests for hearings from each agency appears in this report. Approximately 70% of all those cases went to final hearing and a significant number of those involved extensive work on the part of each hearing officer prior to the actual holding of the hearing. A very significant part of this division's workload comes from the Baker Act.

The Baker Act provides that persons who are involuntarily hospitalized on account of a mental illness are entitled to periodic hearings respecting the appropriateness of continued involuntary hospitalization. Florida Statutes, §394.467(4). Prior to the adoption of the new Administrative Procedure Act, Chapter 74-310, Laws of Florida, these hearings were conducted by a hearing examiner under contract to the Department of Health and Rehabilitative Services. At the request of the department, the Division of Administrative Hearings had provided hearing officers to conduct these hearings since March, 1975. When the division began administering hearings for continued involuntary hospitalization, there was a typical lag of up to four months between the time that a hearing was conducted and an order entered. With few exceptions, orders were set out on a one paragraph form which did nothing to explain the reasons for continued involuntary hospitalization in each case, and frequently left the patient's legal status in doubt. The time lag between

the date that hearings are conducted and the final order entered has been dramatically reduced. Nearly all orders are entered within two weeks of the date of the hearing. Thorough findings of fact are included in each order. The precise basis for authorizing or denying continued involuntary hospitalization is set out in each order and the authority for involuntary hospitalization is clearly delineated.

An average of approximately 60 hearings on Requests For Order Authorizing Continued Involuntary Hospitalization have been conducted each month since March, 1975. The division has assigned three hearing officers to conduct the hearings on a regular basis so that adequate attention can be given to these hearings in which the most fundamental rights of patients at mental institutions are at issue.

In many ways hearing officers have more demanding responsibilities than do judges of the state. In all cases heard by hearing officers of this division it is not only incumbent upon that hearing officer to make a decision as to who is the prevailing party, but the hearing officer must enter detailed findings of fact and conclusions of law on each case heard. This requires a substantial effort subsequent to the holding of the hearing. No matter how well the hearing may have been conducted it is the finished product which is the hearing officer's written Recommended Order which determines the quality of this office's performance.

All things considered, it is my pleasure to report that few problems have arisen in connection with this division's handling of administrative hearings for the State of Florida. That is not to say

however that improvements could not be made in the applicable statutes under which this division and all agencies must operate. The legislature must continue to strive to reach greater uniformity, fairness and speed in the rendering of administrative decisions. The following are suggestions from this division as to what improvements could be made in Chapter 120 and other related statutes which would aid in the achievement of this goal.

SUGGESTIONS FOR AMENDMENTS TO CHAPTER 120

There are several areas concerning administrative processes which although have been greatly improved by the revised Administrative Procedure Act are still nevertheless far from achieving the legislative goals. The administrative decision making process should be fair, simple and without avoidable delays. Presently, there are too many steps which simple decisions must go through before a final decision is rendered. The following recommendations are made for amendments to Chapter 120 and other related statutes to make administrative decisions simpler and quicker.

*HEARING OFFICER'S RECOMMENDED ORDER
SHOULD BE FINAL INSTEAD OF ADVISORY*

Presently, after the Division of Administrative Hearings conducts an administrative hearing and submits its Recommended Order to an agency the agency has the responsibility of entering a Final Order. The agency is permitted 90 days in which to accomplish this. It would be far simpler and more equitable if Chapter 120 was amended to make hearing officers' orders final instead of advisory. This would accomplish several goals.

First, it would eliminate most of the unnecessary three-month delay before an entry of a Final Order. Administrative decisions would become less costly, much quicker and certain legal questions which are now open to argument would be resolved. For example, under the present system agencies cannot appeal from their own orders, therefore if an agency disagrees with the way an administrative proceeding was conducted they are handicapped in what remedies they might have. They have a responsibility to enter a Final Order and of course cannot appeal from their own order. By making hearing officers' Recommended Orders final, an agency would be on a equal footing with its opponent in being able to appeal from Recommended Orders issued by this division.

Furthermore, the present system forces the petitioners to carry the burden of being the appellant should they appeal from an agency's Final Order. Many petitioners have gone to administrative hearings successfully without having to hire counsel to assist them. However, it is inconceivable that members of the general public could sustain an appeal in the district courts of appeal in this state without having to hire an attorney. Often a party will prevail at the administrative hearing level only to have an agency enter an order against them regardless of what the hearing officer recommended. The only remedy in such a case is to file a petition in the court of appeal, something almost impossible to do without hiring an attorney. This puts agencies somewhat at an advantage in the administrative process. Making hearing officers' Recommended Orders final would be a great step toward more fairness in the proceedings.

*HEARING OFFICERS SHOULD HAVE THE
POWERS TO ASSESS COSTS AND ATTORNEY FEES*

There have been many occasions where hearing officers from this division have presided over hearings where it was distinctly apparent that the hearing was requested or caused only for reasons of delay and not in the spirit of a good faith dispute. Presently, hearing officers have no powers to take sanctions against parties that abuse the remedies available under Chapter 120. It is suggested that it would be more in keeping with the spirit of this legislation should hearing officers have the power to assess costs and attorney fees for the prevailing parties where, in a hearing officer's discretion, it appears such an award is justified.

*THERE NEEDS TO BE A GREATER EFFORT TO
ACHIEVE ADMINISTRATIVE UNIFORMITY*

Greater emphasis should be placed on further achieving uniformity among all agencies and the Florida Statutes with regard to all aspects of administrative proceedings. It should be noted that the Revisor's Bill, although prepared, has not been passed by the legislature regarding the impact of the new Administrative Procedure Act, and there is a great need for this legislation. Furthermore, the legislature should probably form or assign a committee the responsibility of analyzing agency procedures with regard to making agency decisions more uniform. For example, many agencies such as the Department of Environmental Regulation have an involved and complex appeal procedure by which agency decisions go through several channels and levels of administration before final actions are rendered.

The wisdom of having administrative review boards in many agencies should be questioned. It is doubtful whether continuing administrative levels of decision making authority add anything to government except more delay and expense. Similar examples of bureaucratic layers are found in the state universities, the DRI process under Chapter 380, F.S., and other more obscure agency procedures.

The philosophy of the Model Rules of Procedure under §120.54(10), F.S., should not be abandoned. The idea of uniform rules and procedures should be broadened into comprehensive legislation dealing with a definitive statement of a uniform method of reaching agency decisions. Government need not be so complex that each agency has a different method of arriving at a conclusion to a problem or a dispute.

A recent example of government getting more rather than less complex is found in Chapter 75-273 which amended and reinstated Chapter 464.21, F.S., dealing with the licensing of nurses. Although this chapter was passed a year after the new Administrative Procedure Act, its provisions are in conflict with that act. There are many other instances of how we are departing from the initial achievement of the new Administrative Procedure Act and appear to be eroding much of its impact. This trend must be reversed.

ANALYSIS OF AGENCY REQUESTS FOR HEARING OFFICERS FOR
CALENDAR YEAR 1976

<u>AGENCY</u>	<u>NO. OF</u> <u>CASES</u>
<u>Department of Administration</u>	1
Administration Commission	4
Division of Administrative Hearings	1
Career Service Commission	73
Florida Land and Water Adjudicatory Commission	7
Joint Administrative Procedures Commission	1
Division of Personnel	1
Division of Retirement	5
	TOTAL: <u>93</u>
<u>Department of Agriculture and Consumer Services</u>	TOTAL: <u>9</u>
<u>Department of Business Regulation</u>	
Division of Beverage	124
Division of General Regulation	12
Division of Hotels and Restaurants	1
Division of Florida Land Sales	15
Division of Pari-Mutuel Wagering	1
	TOTAL: <u>153</u>
<u>Department of Commerce</u>	3
Division of Labor	18
Public Employees Relations Commission	112
	TOTAL: <u>133</u>
<u>Office of the Comptroller</u>	13
Division of Finance	76
Securities Commission	11
	TOTAL: <u>100</u>
<u>Department of Criminal Law Enforcement</u>	TOTAL: <u>2</u>
<u>Department of Education</u>	7
Alachua County School Board	1
Board of Education	1
Baker County School Board	1
Bureau of Blind Services	1
Bradford County School Board	1
Brevard Community College	1
Brevard County School Board	1
Broward County School Board	5
Calhoun County School Board	1

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Charlotte County School Board	1
Chipola Junior College	1
Citrus County School Board	1
Clay County School Board	1
Collier County School Board	1
Columbia County School Board	1
Dade County School Board	2
DeSoto County School Board	1
Duval County School Board	1
Escambia County School Board	1
Flagler County School Board	1
Florida Agricultural & Mechanical University	1
University of Florida	1
Florida State University	5
Florida Technological University	5
Gadsden County School Board	1
Gilchrist County School Board	1
Gulf Coast Community College	1
Hamilton County School Board	1
Hendry County School Board	1
Hernando County School Board	1
Hillsborough County School Board	1
Indian River Community College	1
Indian River County School Board	1
Jackson County School Board	1
Lake City Community College	1
Lake County School Board	1
Lake Sumter Community College	1
Lee County School Board	1
Leon County District School Board	2
Levy County School Board	1
Liberty County School Board	1
Manatee County School Board	2
Miami-Dade Community College	1
Monroe County School Board	2
Nassau County School Board	1
University of North Miami	1
Okaloosa County School Board	1
Okeechobee County School Board	1
Orange County School Board	3
Palm Beach Junior College	2
Palm Beach County School Board	1
Pasco County School Board	1
Pensacola Junior College	1
Pinellas County School Board	6
Polk Community College	1
Polk County School Board	1
Professional Practices Council	8
St. Johns River Junior College	1
St. Lucie County School Board	1
Sarasota County School Board	1
University of South Florida	2

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Sumter County School Board	1
Suwannee County School Board	1
Wakulla County School Board	1
Walton County School Board	1
Washington County School Board	1
TOTAL:	<u>105</u>
<u>Department of Environmental Regulation</u>	TOTAL: <u>90</u>
<u>Department of General Services</u>	TOTAL: <u>8</u>
<u>Department of Health and Rehabilitative Services</u>	6
Anclote Manor Hospital (Baker Act)	44
Florida Keys Memorial Hospital	1
Florida Mental Health Institute (Baker Act)	1
Florida State Hospital (Baker Act)	408
Division of Health	19
Health Program Office	.1
Office of Licensure and Certification	1
Northeast Florida State Hospital (Baker Act)	8
Office of Community Medical Facilities	12
Division of Retardation	1
St. Johns River Hospital (Baker Act)	1
Shands Teaching Hospital (Baker Act)	1
South Florida State Hospital (Baker Act)	466
Tampa General Hospital (Baker Act)	1
Tampa Memorial Hospital	1
G. Pierce Wood Memorial Hospital (Baker Act)	47
TOTAL:	<u>1013</u>
<u>Department of Insurance</u>	TOTAL: <u>2</u>
<u>Department of Legal Affairs</u>	TOTAL: <u>22</u>
<u>Leon County Board of County Commissioners</u>	TOTAL: <u>1</u>
<u>Department of Natural Resources</u>	5
Central and Southern Florida Flood Control District	18
Game and Fresh Water Fish Commission	1
Northwest Florida Water Management District	1
Southwest Florida Water Management District	22
TOTAL:	<u>47</u>
<u>Department of Offender Rehabilitation</u>	TOTAL: <u>4</u>
<u>Department of Professional and Occupational Regulation</u>	
Board of Accountancy	6
Board of Architecture	3
Barber's Sanitary Commission	3

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Board of Chiropractic Examiners	4
Construction Industry Licensing Board	30
Board of Cosmetology	35
Board of Dentistry	16
Board of Dispensing Opticians	3
Florida Electric Construction Industry Licensing Board	1
Florida Real Estate Commission	144
Board of Funeral Directors and Embalmers	7
Board of Massage	2
Board of Medical Examiners	5
Board of Nursing	26
Nursing Home Administrators	6
Board of Osteopathic Medical Examiners	2
Board of Pharmacy	5
Professional Engineers and Land Surveyors	2
Board of Psychology Examiners	2

TOTAL: 302

Department of Revenue

TOTAL: 116

South Florida Regional Planning Council

TOTAL: 1

Department of State

TOTAL: 1

Department of Transportation

TOTAL: 74

GRAND TOTAL: 2276