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SEVENTH ANNUAL REPORT

This report is submitted to the Administrative Procedures Committee and to the Administration Commission in compliance with the requirements of Section 120.70, Florida Statutes, which provides:

Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures 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.

Utilization of Personnel

During the calendar year 1980, the Division of Adminis-

trative Hearings received 2,433 separate requests for hearings. The requests are broken down by agency as reflected in the attached Appendix. In numerical terms, this represents a reduction of 109 requests from calendar year 1979. In reality, however, there has been a slight increase in the Division's case load.

Among the hearings conducted by Hearing Officers of the Division are Baker Act hearings at the various state hospitals. These hearings are typically conducted by a single Hearing Officer who appears at the hospital which has requested the hearing and conducts as many as twenty hearings in a given day. There were 151 fewer requests for Baker Act hearings during 1980 than in 1979. This decrease has not reduced the amount of time required by the Division to conduct the hearings. Legislation which became effective during 1979 eliminated a class of patients -- sex offenders committed under the provisions of Chapter 917, Florida Statutes -- from the Baker Act hearing process. These hearings typically required very little Hearing Officer time because the patients' legal status made it advantageous for them to remain at the hospital, and they typically waived their right to a hearing. In addition, the amount of time required by Hearing Officers to conduct Baker Act hearings has been increased due to legislation which requires additional facts to be elicited during the course of the hearing. Thus while the number of Baker Act hearings has declined, the time

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that is required to conduct them has increased.

While the number of Baker Act hearings has decreased with no corresponding decrease in time demand on Hearing Officers, the number of non-Baker Act cases has increased slightly. In 1980 there were 1,556 non-Baker Act hearing requests compared to 1,514 for 1979. Further, the percentage of complex non-Baker Act hearings continues to increase creating an increase in demand on Hearing Officer time greater than the simple ratio of increased number of cases. The sum of these factors is an increase in the Division's total case load.

It was projected that legislation relating to the Department of Professional Regulation adopted during the 1979 session would result in a substantial increase in the number of hearings requested by that agency during 1980. Instead of a substantial increase in 1980 the number of Department of Professional Regulation hearings slightly decreased. However, the Department of Professional Regulation continues to project that substantial increase for which the Division must be prepared.

During the 1980 session of the Florida Legislature, the exemption which permitted the Public Service Commission to utilize its own hearing examiners was deleted from the Administrative Procedures Act. The Public Service Commission is now like the majority of other agencies in being obliged to either conduct hearings itself, or to forward them to the Division

of Administrative Hearings for the assignment of a Hearing Officer. Because of this significant change in the conduct of the work by the Public Service Commission and because of the deregulation of several matters previously regulated by the Public Service Commission, the number of hearings conducted by this Division for the Public Service Commission has been relatively small. However, because this change in procedure with the Public Service Commission is still in its beginning stages it is very difficult to project future case loads with regard to the Public Service Commission. Therefore, the Division must continue to be prepared, as it presently is, to deal with a significant increase in caseload from the Public Service Commission.

Events of the last two legislative sessions have increased the number of Hearing Officers from twelve to twenty. This is a dramatic increase. Three of the Hearing Officers were new positions created primarily in anticipation of the increased case load resulting from the creation of the Department of Professional Regulation in 1979. The other five Hearing Officers are those hearing examiners transferred to the Division of Administrative Hearings from the Public Service Commission when that agency's APA exemption was removed in 1980. Since the case load of the Division has increased at a lower rate than the number of Hearing Officers of the Division, the case load carried by each Hearing Officer is lower than in the past.

This relationship has occurred at a fortunate time. The number of contested, complex cases before the Division has increased. Cases of that nature demand more of a Hearing Officer's time. The increased number of Hearing Officers thus allows the Division to continue to provide hearings in a timely fashion with the Hearing Officers still being able to devote a proper amount of time to the preparation of recommended and final orders so that their high quality can be maintained. The Division has maintained a policy of scheduling hearings no more than ninety days from the date of filing of a request for hearing with the Division, unless the parties show good cause for a longer period. In practice, cases are now typically scheduled within less than sixty days from the date the request is received. Furthermore, the Division has an increased capacity to provide Hearing Officers on an expedited basis as the parties desire, compatible with the provisions of law. One of the basic benefits of the Administrative Procedure Act is the speedy resolution of disputes. The present ratio of Hearing Officers to cases lends itself well to the speedy resolution of disputes.

Recommendations for Improvement
in Administration of the
Administrative Procedure Act

The Florida Administrative Procedure Act has received nationwide recognition and is considered by many commentators

to be the most creative and progressive development that has been achieved in governmental administrative procedures in many years. In many respects, the Florida APA has served as a prototype for the Model State Administrative Procedure Act which is being developed by a committee of the American Bar Association.

Two of the Florida APA's most significant features are first, that individuals can anticipate that procedures utilized by all state agencies will be the same; and secondly, that the Hearing Officers who conduct hearings are not directly associated with the agency, which is itself one of the parties in an administrative proceeding. In order for these beneficial aspects of the APA to have full impact, it is desirable that all agencies be obliged to follow practices outlined under the Act and the Model Rules of Procedure, unless the agency's function is in some manner incompatible with these practices. It is also desirable that unless there is some very special reason for an agency to have Hearing Officers of its own, that the hearings be conducted either by the agency head or by a Hearing Officer of the Division. The 1980 Florida Legislature eliminated a major exception to that pattern when it deleted the exemption that allowed the PSC to utilize its own hearing examiners. With one exception, the exemptions that continue to exist are where federal regulations set standards that would not be compatible

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with the APA, or where an extraordinary number of hearings renders it impractical for them to be conducted by Hearing Officers of the Division. This one exception relates to the Public Employees Relations Commission (PERC). Under Section 120.57(1)(a)7, Florida Statutes, PERC is not required to use Hearing Officers of the Division in hearings where the appropriateness of a bargaining unit is considered. Such hearings are in part investigatory in nature. They are not totally compatible with Section 120.57(1) procedures, and the exemption may therefore be appropriate. PERC also has an exemption, however, for hearings involving determinations of unfair labor practices. Section 447.503(5)(b), Florida Statutes, permits PERC to use its own Hearing Officers to conduct these hearings. Thus, an employee of PERC conducts a hearing in which PERC itself has taken a position and plays an adversarial role. Such a relationship is not compatible with the spirit of the APA and deletion of the exemption should be considered.

The APA has now been in effect for six full years. Practices and procedures are continuing to develop, and additional time should be allowed for practices to regularize before any substantial procedural revisions are considered.

Respectfully submitted,



CHRIS H. BENTLEY, Director
Division of Administrative
Hearings

ANALYSIS OF AGENCY REQUESTS FOR HEARING
OFFICERS FOR CALENDAR YEAR 1980

<u>AGENCY</u>	<u>NO. OF CASES</u>
<u>Department of Administration</u>	4
Division of Retirement.....	15
	<u>19</u>
<u>Department of Agriculture and Consumer Services</u>	23
<u>Department of Business Regulation</u>	1
Division of Alcoholic Beverages and Tobacco.....	93
Division of General Regulation.....	3
Division of Florida Land Sales and Condominiums.....	27
Division of Hotels and Restaurants.....	17
Division of Pari-Mutuel Wagering.....	8
	<u>149</u>
<u>City of Clearwater - Civil Service Board</u>	3
<u>Department of Commerce</u>	
Panama City Public Employees Relations Commission.....	1
	<u>1</u>
<u>Department of Community Affairs</u>	19
<u>Office of Comptroller</u>	57
Department of Banking and Finance.....	19
Securities Commission.....	2
	<u>78</u>
<u>Department of Corrections</u>	3
<u>Department of Criminal Law Enforcement</u>	2
<u>Department of Education</u>	5
Department of Blind Services.....	1
Brevard County School Board.....	5
Broward County School Board.....	11
Collier County School Board.....	1
Dade County School Board.....	13
Duval County School Board.....	6
Florida State University.....	2
Florida School for the Deaf and Blind.....	1
Hamilton County School Board.....	1
Hillsborough Community College.....	9

Hillsborough County School Board.....	2
Lake City Community College.....	1
Lake County School Board.....	1
Lee County School Board.....	4
Leon County School Board.....	2
Monroe County School Board.....	1
Nassau County School Board.....	1
Orange County School Board.....	2
Palm Beach County School Board.....	2
Pinellas County School Board.....	4
Polk County School Board.....	2
Professional Practices Services Section, Education Practices Commission.....	15
Putnam County School Board.....	2
Sarasota County School Board.....	2
Seminole Community College.....	1
Seminole County School Board.....	1
University of Florida.....	2
Vocational, Technical, Trade and Business Schools.....	6
	<u>106</u>
<u>Department of Environmental Regulation.....</u>	<u>212</u>
<u>Department of General Services.....</u>	<u>11</u>
<u>Office of the Governor</u>	
Administration Commission.....	1
Florida Land and Water Adjudicatory Commission.....	1
	<u>2</u>
<u>Florida Governor's Council on Indian Affairs.....</u>	<u>1</u>
<u>Human Relations Commission.....</u>	<u>5</u>
<u>Department of Health and Rehabilitative Services</u>	
Miscellaneous.....	287
Vocational Rehabilitation Programs Services.....	1
Baker Act:	
Anclote Manor Hospital.....	93
Florida State Hospital.....	319
Hillsborough Community Mental Health Center.....	8
Northeast Florida State Hospital.....	286
North Florida Evaluation and Treatment Center.....	32
South Florida State Hospital.....	75
G. Pierce Wood Memorial Hospital.....	64
	<u>1,165</u>
<u>Department of Highway Safety and Motor Vehicles.....</u>	<u>12</u>
<u>Department of Insurance.....</u>	<u>49</u>

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<u>Department of Labor and Employment Security</u>	<u>14</u>
<u>Department of Legal Affairs</u>	<u>14</u>
<u>Department of Natural Resources</u>	13
St. John's Water Management District.....	1
South Florida Water Management District.....	3
Southwest Florida Water Management District.....	1
	<u>18</u>
<u>North Central Florida Regional Planning Council</u>	<u>1</u>
<u>Department of Professional Regulation</u>	1
Board of Accountancy.....	5
Board of Architecture.....	9
Barber's Sanitary Commission.....	4
Florida Construction Industry Licensing Board.....	47
Board of Cosmetology.....	6
Board of Dentistry.....	16
Florida Electric Construction Industry Licensing Board.....	5
Board of Funeral Directors and Embalmers.....	1
Board of Medical Examiners.....	20
Board of Nursing.....	17
Board of Optometry.....	5
Board of Osteopathic Medical Examiners.....	4
Board of Pharmacy.....	4
Board of Pilot Commissioners.....	1
Board of Professional Engineers and Land Surveyors.....	5
Board of Real Estate.....	91
Board of Veterinary Medicine.....	2
	<u>243</u>
<u>Public Service Commission</u>	<u>79</u>
<u>Department of Revenue</u>	<u>41</u>
<u>Department of State</u>	12
Division of Corporations.....	3
Division of Cultural Affairs.....	1
Division of Licensing.....	88
	<u>104</u>
<u>Department of Transportation</u>	<u>59</u>
	GRAND TOTAL: <u>2,433</u>