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Director

STATE OF FLORIDA

# Department of Administration

## Division of Administrative Hearings

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TALLAHASSEE

32301

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Bob Graham  
Governor

Nevin G. Smith  
Secretary of Administration

### EIGHTH 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 1981, the Division of Administrative Hearings received 3,299 separate requests for hearings. The requests are broken down by agency as reflected in the attached Appendix. In numerical terms, this represents

an increase of 866 requests from calendar year 1980 and a 36% overall increase in the Division's case load.

While the number of Baker Act hearings in 1981 decreased by some 19%, the number of non-Baker Act cases increased dramatically. In 1981 there were 2,587 non-Baker Act hearing requests compared to 1,556 for 1980, a 66% increase. 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 a significant increase in the Division's total workload.

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. Although that expectation did not materialize in 1980, in 1981 the Division experienced a 152% increase in DPR cases over 1980, from 243 cases to 612 cases. The majority of these cases concern proposed disciplinary action against licensees of the various professions, and therefore the hearings are usually fully contested.

Events of the past several legislative sessions increased the number of Hearing Officers from twelve to twenty. Three of the Hearing Officer positions were established primarily in anticipation of the increased case load resulting

from the creation of the Department of Professional Regulation in 1979. The other five new Hearing Officers were 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. Although the number of cases referred to the Division by the PSC has been small over the past year, the greatly increased total number of cases handled by the Division in 1981 has resulted in the highest individual case load by Hearing Officers in the seven-year history of the Division. This situation is straining our present resources to the maximum. 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 still typically scheduled within less than sixty days from the date the request is received. However, it is questionable if these time periods can be maintained indefinitely if the case load continues to increase. One of the basic benefits of the Administrative Procedure Act is the speedy resolution of disputes. The present ratio of Hearing Officers to cases will make it extremely difficult to provide such prompt disposition of cases if current trends continue, but the Division intends to exert every effort to maintain its time schedules.

#### UTILIZATION OF COURT REPORTERS

As in the past years, most agencies utilized the services of private court reporters in fulfilling the requirement under subsection 120.57(1)(b)6, Florida Statutes, to "accurately and completely preserve all testimony in the proceeding." In some cases where agencies use recording equipment instead of hiring court reporters, the other party to the hearing retains the services of a court reporter at its expense. In such cases, the recordation of the proceedings becomes the official transcript under Rule 28-5.306, Florida Administrative Code. As previously noted in the Division's Sixth Annual Report, it is believed that consideration should be given to coordinating the hiring of court reporters by agencies so that the State can pay the lowest possible fee consistent with good service.

#### DATA PROCESSING EQUIPMENT

In the Division's annual report for the calendar year 1979, it was stated that the Division was in the process of examining data processing and word processing needs to determine whether automation of these functions would better serve the Division's record keeping, secretarial, and subject matter index functions. The Division currently is seeking a budget amendment for the transfer of available funds to purchase data processing

equipment due to a reduction in personnel in the Clerk's Office, coupled with the large increase in work volume over the past year. To date, the Division has processed approximately 17,500 cases. Because of the sheer volume of information involved in a case load of that magnitude, it will soon become impossible to manually collect all of the data necessary for the proper functioning of the Division in a cost-effective manner. At present, the data base remains small enough for the Division to enter it into data processing equipment memory at a relatively inexpensive cost, but delay in acquiring such a base will only increase the expense. It is anticipated that the ability to quickly extract data from the files will make docket information current and more readily available, and will improve coordination of travel and thus reduce costs. It should also allow a more accurate picture of the Division's workload with respect to individual Hearing Officers, length and cost of hearings, and purchasing and budget information.

RECOMMENDATIONS FOR CHANGE OR  
IMPROVEMENT IN THE ADMINISTRATIVE PROCEDURE ACT

(a) The Division restates its position reflected in the 1980 calendar year report that the exemption to the Public Employees Relations Commission under subsection 447.503(5)(b),

Florida Statutes, which permits that agency to use its own Hearing Officers to conduct unfair labor practices proceedings, is incompatible with the spirit of the APA, and deletion of the exemption should be considered. This is based on the view that Hearing Officers who conduct adversarial hearings under the APA should not be directly associated with the agency which is one of the parties in the administrative proceeding.

(b) Section 120.58(1)(b), Florida Statutes, authorizes an agency or its duly empowered presiding officer or a Hearing Officer to issue subpoenas and "to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure." In addition, Section 120.58(3) provides that an agency may seek enforcement of a subpoena or order directing discovery issued under the authority of the Act by filing a petition for enforcement, pursuant to Section 120.69, in an appropriate circuit court, and that a failure to comply with an order of the court shall result in a finding of contempt of court. Section 120.69 provides the procedures for an agency to seek judicial enforcement of agency action.

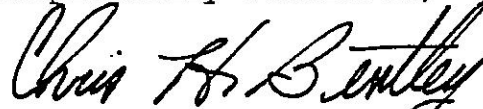
There is current litigation concerning the authority of a Hearing Officer to impose sanctions to enforce discovery orders. Rule 1.380(b), Florida Rules of Civil Procedure, provides for various sanctions by a court for the failure of a party to comply

with discovery orders, including provisions that certain matters will be taken as established, refusing to allow a party to support or oppose claims or defenses, or to introduce matters in evidence, striking pleadings, or staying or dismissing the proceeding. These sanctions should be made specifically available to Hearing Officers in Chapter 120, as contemplated under Section 120.58(1)(b), without the necessity of enforcement by court action. If they are not, an administrative proceeding would be unduly delayed and such delay would provide a vehicle for a party to totally frustrate the orderly and expeditious conduct of the hearing, and ultimate resolution of the case.

(c) Additionally, provision should be made for the imposition of sanctions by the Hearing Officer during the course of a hearing when a person refuses to obey an order of the Hearing Officer. Such orders could result from actions that disrupt the hearing process, refusal to produce documents, or refusal to testify in response to lawful questions. Rule 28-5.208, F.A.C., authorizes a presiding officer to issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the entry of a recommended order of default pursuant to Rule 28-5.211. Although Rule 28-5.211, F.A.C., also provides for procedures to dismiss petitions or for entry of defaults in cases of the failure or refusal of a party to comply with any lawful order, there is no specific statutory basis for the same in Chapter 120.

(d) Rule 28-5.208 provides that parties may obtain discovery as provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. Consideration should be given to extending this rule to Rules 1.410 and 1.420 which provide procedures for subpoenas and the dismissal of actions. Both rules should be applied as may be pertinent to administrative proceedings.

Respectfully submitted,



CHRIS H. BENTLEY, Director  
Division of Administrative Hearings

Enclosure:

Analysis of Agency Requests  
for Hearing Officers for  
Calendar Year 1981



DIVISION OF ADMINISTRATIVE HEARINGS  
 ANALYSIS OF AGENCY REQUESTS FOR HEARING  
 OFFICERS FOR CALENDAR YEAR 1981

<u>AGENCY</u>	<u>NO. OF CASES</u>
<u>Department of Administration</u> . . . . .	1
Bureau of Insurance . . . . .	1
Division of Retirement . . . . .	11
State Awards Committee . . . . .	2
	<u>15</u>
<u>Department of Agriculture and Consumer Services</u> . . . . .	25
<u>Department of Business Regulation</u>	
Division of Alcoholic Beverages and Tobacco . . . . .	123
Division of Hotels and Restaurants . . . . .	34
Division of Florida Land Sales and Condominiums . . . . .	15
Division of Pari-Mutuel Wagering . . . . .	6
	<u>178</u>
<u>Department of Citrus</u> . . . . .	1
<u>City of Clearwater</u> . . . . .	21
<u>Office of the Comptroller</u> . . . . .	27
Department of Banking and Finance . . . . .	66
	<u>93</u>
<u>Department of Corrections</u> . . . . .	5
<u>Department of Education</u> . . . . .	2
Bay County School Board . . . . .	1
Division of Blind Services . . . . .	3
Brevard County School Board . . . . .	4
Broward County School Board . . . . .	28
Chipola Junior College . . . . .	1
Clay County School Board . . . . .	1
Dade County School Board . . . . .	37
Florida School for Deaf and Blind . . . . .	2
DeSoto County School Board . . . . .	1
Duval County School Board . . . . .	16
Education Practices Commission . . . . .	50
Florida State University . . . . .	1
Gulf County School Board . . . . .	1

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Hamilton County School Board . . . . .	2
Hillsborough County School Board . . . . .	2
Holmes County School Board . . . . .	2
Lake County School Board . . . . .	1
Lee County School Board . . . . .	6
Leon County School Board . . . . .	7
Manatee County School Board . . . . .	2
Martin County School Board . . . . .	1
Miami-Dade Community College . . . . .	1
Monroe County School Board . . . . .	3
Orange County School Board . . . . .	6
Palm Beach County School Board . . . . .	3
Pinellas County School Board . . . . .	7
Polk Community College . . . . .	4
St. Johns River Junior College . . . . .	1
Santa Rosa County School Board . . . . .	2
University of Florida . . . . .	2
Valencia Community College . . . . .	1
Vocational, Technical, Business and Trade Schools . . . . .	1
Volusia County School Board . . . . .	1
	<u>203</u>

Department of Environmental Regulation . . . . . .237

Florida Game and Fresh Water Fish Commission . . . . . 1

Department of General Services . . . . . 6

Office of Governor

Florida Land and Water Adjudicatory Commission . . . . .	12
Human Relations Commission . . . . .	10
	<u>22</u>

Department of Health and Rehabilitative Services

Bureau of Community Medical Facilities . . . . .	3
Office of Medicaid Program Analysis . . . . .	1
Miscellaneous . . . . .	.465
Baker Act:	
Anclote Manor Hospital . . . . .	.117
Florida State Hospital . . . . .	.381
Hillsborough Community Mental Health Center . . . . .	3
Northeast Florida State Hospital . . . . .	.130
North Florida Evaluation and Treatment Center . . . . .	3

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Shands Teaching Hospital . . . . .	1
South Florida State Hospital . . . . .	46
G. Pierce Wood Memorial Hospital . . . . .	31
	<u>1,181</u>
<u>Department of Highway Safety and Motor Vehicles . . . . .</u>	<u>19</u>
<u>Department of Insurance . . . . .</u>	<u>53</u>
<u>Department of Labor and Employment Security . . . . .</u>	<u>299</u>
<u>Department of Law Enforcement . . . . .</u>	<u>13</u>
<u>Department of Legal Affairs . . . . .</u>	<u>1</u>
<u>Department of Natural Resources . . . . .</u>	<u>17</u>
St. John's Water Management District . . . . .	4
South Florida Water Management District. . . . .	5
	<u>26</u>
<u>Parole and Probation Commission . . . . .</u>	<u>5</u>
<u>Department of Professional Regulation . . . . .</u>	<u>2</u>
Board of Accountancy . . . . .	13
Accupuncture . . . . .	17
Board of Architecture. . . . .	8
Barber's Sanitary Commission . . . . .	1
Board of Chiropractic Examiners. . . . .	12
Florida Construction Industry Licensing Board. . . . .	66
Board of Cosmetology . . . . .	10
Board of Dentistry . . . . .	27
Florida Electrical Industry Licensing Board. . . . .	4
Board of Funeral Directors and Embalmers . . . . .	9
Board of Land Surveyors. . . . .	5
Board of Medical Examiners . . . . .	71
Board of Nursing . . . . .	66
Board of Nursing Home Administrators . . . . .	18
Board of Opticianry. . . . .	11
Board of Optometry . . . . .	6
Board of Osteopathic Medical Examiners . . . . .	3
Board of Pharmacy. . . . .	24

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Board of Pilot Commissioners. . . . .	4
Board of Podiatry Examiners . . . . .	2
Board of Professional Engineers . . . . .	3
Board of Real Estate. . . . .	225
Board of Veterinary Medicine. . . . .	4
	<u>611</u>
<u>Public Service Commission. . . . .</u>	<u>35</u>
<u>Department of Revenue. . . . .</u>	<u>21</u>
<u>Department of State. . . . .</u>	<u>1</u>
Division of Corporations. . . . .	19
Division of Licensing . . . . .	35
	<u>55</u>
<u>Department of Transportation. . . . .</u>	<u>168</u>
<u>Department of Veteran and Community Affairs. . . . .</u>	<u>5</u>
	GRAND TOTAL: <u>3,299</u>