



Chris H. Bentley
Director

STATE OF FLORIDA

Department of Administration

Division of Administrative Hearings

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TALLAHASSEE

32301

February 1, 1983

Bob Graham
Governor

Nevin G. Smith
Secretary of Administration

NINTH 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 1982, the Division of Administrative Hearings received 3,546 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 247 requests from calendar year 1981 and a 7.5% overall increase in the Division's case load.

While the number of Baker Act hearings in 1982 decreased by 19%, there was a 15% increase in the number of non-Baker Act cases. In 1982 there were 2,966 non-Baker Act hearing requests compared to 2,587 in 1981. In addition to the significant increase in pure case numbers, the greater complexity of such cases creates more demand on Hearing Officer time than previously has been the case.

It was reported in the previous Annual Report that the Division had experienced a 152% increase in Department of Professional Regulation cases in 1981 as compared to 1980, from 243 cases to 612 cases. In 1982, this trend continued with an 82% increase of DPR cases from 612 in 1981 to 1,113 in 1982. DPR cases thus constituted 37.5% of the total non-Baker Act cases in 1982.

With the hiring of two new Hearing Officers in 1982, to fill vacant positions, the Division is presently at its full strength of twenty Hearing Officers, including the Director and Assistant Director. Even at full strength, the Division is experiencing the highest individual case load per Hearing Officer since its creation in 1974. Although the Division can presently provide Hearing Officers in a timely manner, a continued increase in the number of cases filed will necessarily extend the time required to process cases. If there is a continued increase in cases filed, it may become necessary to request additional Hearing

Officers in order to timely process the case load. It should be noted that although the Division is operating at or near its capacity, emergency hearings and justifiable requests for expedited hearings are uniformly honored, and hearings in such cases are held on extremely short notice.

The reductions in the 1982-83 general revenue budget of the Division necessitated by revenue shortfalls have had a serious impact on the ability of the Division to hold hearings in a timely manner. Hearings are held where the parties are located, thus requiring the Hearing Officers to travel extensively. The budget cutbacks have had to largely come out of travel expense money, thereby drastically reducing the capability of the Division to hold hearings. Even with every effort being made to insure efficiency in travel, a serious backlog in cases will develop in this fiscal year unless approximately \$20,000 of the budget cutbacks are restored. This problem extends to future budget years as well. The Division is presently working with the Department of Professional Regulation to secure trust fund money to replace the lost general revenue money. If the Division does not receive additional money for travel, the time required to process cases will significantly increase and a serious backlog will occur. Additional Hearing Officers would not cure the problem because without travel money the Hearing Officers cannot hold hearings.

UTILIZATION OF COURT REPORTERS

Most agencies continue to utilize 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." The Division restates its prior recommendation 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.

WORD PROCESSING EQUIPMENT

The Eighth Annual Report indicated that the Division was in the process of purchasing equipment to perform record-keeping functions in the Clerk's Office. The Division purchased a "standalone" word processor in 1982 which has been used to begin automating this function. "Hands-on" experience with the equipment has confirmed its usefulness. The equipment saves time since required information can be entered once and then accessed and printed in a variety of formats without requiring retyping. In this manner, routine weekly, monthly, and annual reports on cases by such topics as case number, Hearing Officer, agency or location can be generated after one entry. This time savings reduces costs of clerical time while producing more accurate and more detailed information. Presently, a technique is being devised to implement a subject matter index on the word processor, which will satisfy the second of the three areas which the Division felt

should be automated.

The third area in which automation is being explored is that of word processing. It is clear that the Division could benefit from the use of word processing equipment due to an increased case load and the amount of repetitive typing. The purchase of such equipment was in fact recommended in a 1979 DGS Electronic Data Processing (EPD) Study. After using such equipment for records-processing, the Division can verify that economy of time and money would result from secretarial use as well. A request for the purchase of additional word processing equipment for the secretarial staff was included in the 1983-85 biennial budget request. The purchase of this equipment for the secretarial staff will reduce lengthy retyping and produce a better quality product, while saving time.

RECOMMENDATIONS FOR CHANGE OR
IMPROVEMENT IN THE ADMINISTRATIVE PROCEDURE ACT

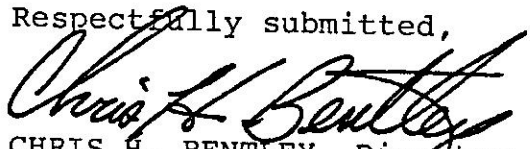
The Division again states its position that the exemption to the Public Employees Relations Commission under subsection 447.503(5)(b), Florida Statutes, which permits that agency to use its own Hearing Officers to conduct unfair labor practices proceedings, is incompatible with the spirit of the APA, and deletion of the exemption should be considered.

The Division restates its prior position expressed in the 1981 Annual Report that specific statutory authority should be made available to Hearing Officers in Chapter 120 to impose sanctions to enforce discovery orders, as provided under Rule 1.380(b),

Florida Rules of Civil Procedure, and also for the imposition of sanctions by a Hearing Officer during the course of a hearing when a person refuses to obey the lawful order of a Hearing Officer.

In addition, it is again recommended that Rule 28-5.208, Florida Administrative Code, be extended to Rules 1.410 and 1.420, Florida Rules of Civil Procedure, which provide procedures for subpoenas and the dismissal of actions.

Respectfully submitted,



CHRIS H. BENTLEY, Director
Division of Administrative Hearings

Attachment:

Analysis of Agency Requests
for Hearing Officers for
Calendar Year 1982

DIVISION OF ADMINISTRATIVE HEARINGS
 ANALYSIS OF AGENCY REQUESTS FOR HEARING
 OFFICERS FOR CALENDAR YEAR 1982

<u>AGENCY</u>	<u>NO. OF CASES</u>
<u>Department of Administration</u>	4
Florida Commission on Ethics	1
Human Relations Commission	12
Bureau of Insurance	3
Division of Retirement	19
	<hr/> 39 <hr/>
 <u>Department of Agriculture and Consumer Services</u>	 14 <hr/>
 <u>Department of Business Regulation</u>	
Division of Alcoholic Beverages and Tobacco	128
Division of Hotels and Restaurants	30
Division of Florida Land Sales and Condominiums	38
Division of Pari-Mutuel Wagering	7
	<hr/> 203 <hr/>
 <u>City of Clearwater</u>	 19 <hr/>
 <u>Department of Community Affairs</u>	 2 <hr/>
 <u>Office of Comptroller</u>	 47
Department of Banking and Finance	11
Division of Securities	1
	<hr/> 59 <hr/>
 <u>Department of Corrections</u>	 4 <hr/>
 <u>Department of Education</u>	
Bureau of Blind Services	2
Board of Regents	7
Brevard County School Board	2
Broward County School Board	23
Charlotte County School Board	1
Dade County School Board	46
Duval County School Board	3

Department of Education (continued)

Education Practices Commission	55
Escambia County School Board	2
Florida State University	1
Gilchrist County School Board	1
Hendry County School Board	2
Hillsborough Community College	1
Holmes County School Board	1
Lee County School Board	5
Levy County School Board	1
Madison County School Board	1
Manatee County School Board	2
Nassau County School Board	1
North Florida Junior College	1
Okeechobee County School Board	1
Orange County School Board	2
Palm Beach County School Board	7
Pinellas County School Board	8
Suwannee County School Board	3
Tallahassee Community College	1
University of Florida	2
University of South Florida	1
Vocational, Technical, Business and Trade Schools	1
Wakulla County School Board	1
	<u>185</u>

Department of Environmental Regulation 238

Department of General Services 9

Office of Governor

Florida Land and Water Adjudicatory Commission 18

Department of Health and Rehabilitative Services

Bureau of Community Medical Facilities	12
Office of Entomology	1
Office of Licensure and Certification	1
Office of Medicaid Program Analysis	1
Miscellaneous	488
NON-BAKER ACT TOTAL	<u>503</u>
Baker Act:	
Anclote Manor Hospital	89
Florida State Hospital	356
Northeast Florida State Hospital	22

Department of Health and Rehabilitative Services
Continued:

North Florida Evaluation and Treatment Center	1
South Florida State Hospital.	37
Tampa Heights Hospital.	1
Veterans Administration Medical Center.	1
West Florida Community Care Center.	11
G. Pierce Wood Memorial Hospital.	63
BAKER ACT TOTAL	<u>581</u>
	<u>1,084</u>
<u>Department of Highway Safety and Motor Vehicles</u>	<u>18</u>
<u>Department of Insurance</u>	<u>123</u>
<u>Department of Labor and Employment Security</u>	
<u>Division of Employment and Training</u>	<u>36</u>
<u>Department of Law Enforcement</u>	
<u>Division of Standards and Training</u>	<u>34</u>
<u>Department of Legal Affairs</u>	<u>3</u>
<u>Department of Natural Resources</u>	<u>25</u>
St. John's River Water Management District.	6
South Florida Water Management District	2
	<u>33</u>
<u>Florida Parole and Probation Commission</u>	<u>4</u>
<u>Pinellas County Planning Council.</u>	<u>1</u>
<u>Department of Professional Regulation</u>	<u>1</u>
Board of Accountancy.	15
Acupuncture	10
Board of Architecture	25
Barber's Sanitary Commission.	8
Board of Chiropractic Examiners	32

Department of Professional Regulation
 Continued:

Clinical Social Workers	4
Florida Construction Industry Licensing Board	241
Board of Cosmetology.	36
Board of Dentistry.	82
Direct Dispossess	1
Florida Electrical Industry Licensing Board	26
Board of Funeral Directors and Embalmers.	19
Board of Land Surveyors	7
Marriage and Family Therapists.	7
Board of Medical Examiners.	136
Board of Naturopathic Examiners	1
Board of Nursing	59
Board of Nursing Home Administrators	27
Board of Opticianry	22
Board of Optometry.	22
Board of Osteopathic Medical Examiners.	12
Board of Pharmacy	74
Board of Pilot Commissioners.	6
Board of Podiatry Examiners	8
Board of Professional Engineers	15
Board of Psychological Examiners.	14
Board of Real Estate.	244
Board of Veterinary Medicine.	12
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	1,165

Public Service Commission 17

Department of Revenue 25

Department of State

Division of Corporations.	6
Division of Licensing	28
	<hr/>
	34

Department of Transportation. 179

GRAND TOTAL. 3,546