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Director

STATE OF FLORIDA

# Department of Administration

## Division of Administrative Hearings

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TALLAHASSEE

32301

February 1, 1984

Bob Graham  
Governor

Nevin G. Smith  
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### TENTH 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 1983, the Division of Administrative Hearings received 4,027 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 481 requests from calendar year 1982 and a 13.6% overall increase in the Division's case load.

An Affirmative Action/Equal Opportunity Employer

Calendar year 1983 saw the highest case load in the history of the Division. It is the first time the Division has broken the 4,000 case barrier. Of those cases, 855 were Baker Act cases and 3,172 were cases pursuant to Section 120.57, Florida Statutes, involving substantial interests of the parties. As has been the pattern for several years, there is less and less chaff and more wheat among the cases filed with the Division. That is, the cases are continuing to involve issues growing in complexity and thus, the cases individually are more time consuming to a Hearing Officer. The dramatic increase in case load has led to a crisis of sorts for the Division. For several years the Division has been unable to get additional personnel to meet its needs because of the budget constraints necessarily imposed throughout state government. The result of this is that the Division is presently operating beyond its reasonable capacity. If this situation is not remedied, the Division will be unable to timely process the hearings that come before it.

The Division sprang into life under the new Administrative Procedure Act on January 1, 1975. In that first year, there were 8 Hearing Officers, plus the Director and Assistant Director. Today, the number of Hearing Officers has increased to 18. Over the same period of time, the number of 120.57(1) cases, our primary case load, has almost trebled. In all of these references, I will distinguish between 120.57(1), ("57"), hearings and Baker Act hearings. Baker Act hearings, while significant in number and substantively important, are very short in duration and are handled on docket days at the various state hospitals so that the actual

time required to process that case load is much lower per case than the time required to process a "57" case.

There is set out below in Table I the actual case load of the Division for each year of its existence with the percentage increase in "57" case load from year to year, the number of Baker Act hearings held that year, and the number of Hearing Officers authorized for that year by the Legislature. It should be noted that early in the life of the Division, the Director and Assistant Director carried case loads essentially equal to that of a Hearing Officer. However, with the increase in the size of the Division and its case load, the administrative responsibilities have increased such that neither the Director nor the Assistant Director can effectively carry a significant case load. Thus, the effective strength of the Division has been further reduced.

Calendar Year	120.57 Cases	% Increase (Decrease)	Baker Act Hearings	Hearing Officers	Director Assistant Director
1975	1196	----	961	8	2
1976	1299	8.6%	997	8	2
1977	1322	1.8%	987	10	2
1978	1290	(2.4%)	1283	10	2
1979	1514	17.4%	1028	13	2
1980	1556	2.8%	877	18	2
1981	2587	66.3%	712	18	2
1982	2965	14.6%	581	18	2
1983	3172	7.0%	855	18	2

TABLE I

The above figures show a steady and typically large growth in case load with the exception of 1978 when there was a slight

decrease in our "57" case load. The number of Hearing Officers available to handle that case load has not grown at nearly the same rate as the case load. In the first five years of the Division, when the Director and Assistant Director were available to sit as Hearing Officers, essentially on a full-time basis, the annual "57" case load per Hearing Officer averaged 113.6 cases. For the last three years, when the Director and Assistant Director have been unable to carry a significant case load because of their administrative responsibilities, the "57" case load per Hearing Officer has averaged 162 cases per year. The actual "57" case load for 1983 per Hearing Officer was 176 cases per year. The Division has averaged an annual growth in case load of 14.5% for the nine years of its existence. There is no reason to believe that the significant growth in "57" case load will not continue.

The ultimate job of the Hearing Officers is to conduct and decide hearings, or trials, and write the Recommended and Final Orders disposing of those trials. By that measure, the work of the Hearing Officers compares extremely favorably to that of the Circuit Courts and District Courts of Appeal in Florida. The State Court Administrator's Office projected that in 1983 each Circuit Judge in the state would conduct an average of 21.37 trials, with the heaviest load being in the Eighteenth Circuit where each Judge would conduct 33.43 trials. For the same year each Hearing Officer in the Division of Administrative Hearings conducted 66.9 trials. The trials conducted by the Division of Administrative Hearings are as long or longer on the average than the trials

conducted in the Circuit Courts. Further, a high percentage of trials conducted by the Hearing Officers involve complex and sophisticated issues of fact and law. The Hearing Officers do not have the luxury of sitting in one place for the conduct of their business. Rather, the Hearing Officers travel throughout the state conducting the trials where the parties are located.

The Recommended and Final Orders entered by the Hearing Officers are a hybrid combining attributes of orders of the Circuit Court and opinions of the District Courts of Appeal. In length and in content, the Recommended and Final Orders of the Hearing Officers are more akin to an opinion from the District Court of Appeal than an order of the Circuit Court. The State Court Administrator's Office projected that in 1983 each District Court of Appeal Judge in the State of Florida would write an average of 62 opinions. Comparably, in 1983, each Hearing Officer wrote an average of 61 Recommended or Final Orders. In writing these orders, the Hearing Officers do not have available to them any research assistance in the form of research aides. Each District Court of Appeal Judge has two lawyers as research aides to assist in writing and research. Finally, as to quality, the recent statistics of the First District Court of Appeal, which hears the vast majority of appeals involving Recommended and Final Orders of Hearing Officers, show that with regard to the rate of affirmance or reversal, the Hearing Officers are typically equal in their

rate of affirmance to the Circuit Court and significantly better than the Deputy Commissioners writing Worker's Compensation orders.

The Division has operated in the past with a bare minimum of support personnel. For the eighteen Hearing Officers and Assistant Director and Director, there are a total of ten secretaries. The Assistant Director and Director share an Executive Secretary and for every two Hearing Officers there is a Senior Secretary. There are four other Career Service employees who perform administrative and clerical functions in support of the operations of the Division. These employees function as the Clerk of the Division, maintain the records of the Division, and provide the administrative and management information to the Director necessary for proper administration of the Division. The case load has far outstripped the capacity of a four-person Clerk's Office to properly manage. Several additional positions are needed in the Clerk's Office in order to physically handle the paper processed by the Division daily.

The above statistics show that the Hearing Officers are producing a large quantity of high-quality work. Although not part of the judiciary, it is obvious that the Hearing Officers must have the qualities and skills of a trial judge. The hearings conducted by the Hearing Officers are very broad in their subject matter. The hearings always involve issues important to the individuals who are parties to the hearing and very often involve issues important to the entire state. Measured in dollars, the hearings often involve issues valued in the tens of millions of

dollars and more than a half dozen hearings have involved issues valued at a half-billion dollars or greater. In human terms, the hearings determine the right of individuals to make a living in the manner they choose, the proper placement of children needing exceptional education, whether an individual will be involuntarily hospitalized in a state mental institution, and a myriad of other, real, personal interests vitally important to the people of this state. Considering the quantity and quality of their work as well as the weight of the responsibility they bear, the Hearing Officers are underpaid for the service they perform.

The Hearing Officers are Career Service employees and are assigned to Pay Grade 29 in the Career Service System. Pay Grade 29 has an annual minimum salary of \$30,610.08 and an annual maximum salary of \$42,595.20. Table II below paints a picture of the average Hearing Officer with regard to experience and salary.

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<u>HEARING OFFICERS</u>			
	<u>Average</u>	<u>Minimum to Maximum</u>	
Member of the Bar	15 1/2 Yrs	9 Yrs to 34 Yrs	
Length of Service as Hearing Officer	6+ Yrs	9 Mths to 9 Yrs	
Age	43 Yrs	35 Yrs to 64 Yrs	
<u>HEARING OFFICER SALARIES AS OF OCTOBER 1, 1983</u>			
	Average = \$40,771.00		
	Highest = \$43,694.00		
	Lowest = \$34,583.00		
(TABLE II)			

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In Florida the three positions most analogous to the Hearing Officers in terms of responsibility as Trial Judges are the Judges of the County Court, the Judges of the Circuit Court and the Deputy Commissioners deciding matters in Worker's Compensation. Table III

compares the salary, as of October 1, 1983, of each of those positions to the salary paid to the Hearing Officers as of the same date.

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COUNTY JUDGE

Annual Salary \$53,851

County Judge makes:

\$19,268 more than the lowest paid Hearing Officer.

\$13,081 more than the average Hearing Officer.

\$10,157 more than the highest paid Hearing Officer.

DEPUTY COMMISSIONER

Annual Salary \$56,994

Deputy Commissioner makes:

\$22,411 more than the lowest paid Hearing Officer.

\$16,224 more than the average paid Hearing Officer.

\$13,300 more than the highest paid Hearing Officer.

CIRCUIT JUDGE

Annual Salary \$58,247

Circuit Judge makes:

\$23,664 more than the lowest paid Hearing Officer.

\$17,477 more than the average paid Hearing Officer.

\$14,553 more than the highest paid Hearing Officer.

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(TABLE III)

Several states have an Administrative Procedure Act providing for Hearing Officers, typically called Administrative Law Judges in those states, similar to the Florida system. By way of comparison, California pays their Administrative Law Judges \$43,800 to \$52,980. Minnesota pays their Administrative Law Judges \$41,000 to \$50,000. New Jersey pays their Administrative Law Judges \$39,144 to \$58,716. It is worthy of note that New Jersey requires their Administrative Law Judges to have been a member of the New Jersey Bar for four years. The Florida Administrative Procedure Act, by statute, imposes upon the Hearing Officers the requirement that



they have been a member of the Florida Bar for five years, the same requirement as that for Circuit Judge.

A final distressing comparison is to compare the salary of a Hearing Officer employed by the Division on the first day of its life, January 1, 1975, to the salary of that same Hearing Officer after nine years of service and to make that comparison in constant dollars adjusted for inflation. That comparison shows that in January 1975, Hearing Officers made \$23,059.92 per year. Those same Hearing Officers, now the highest paid Hearing Officers, make in 1975 dollars \$23,529.48 per year as of January 1, 1984. Thus, in return for nine years of good service and experience the state now pays those Hearing Officers only \$469.56 more per year than it did in 1975. The average Hearing Officer in 1975, who had no experience, made \$23,059.92 per year. As of October 1, 1983, in 1975 dollars, that average Hearing Officer, who now has over 6 years experience, makes \$21,955.08 per year or \$1,104.82 per year less than the average Hearing Officer in 1975.

The Division will not continue to attract or retain the high caliber of attorney which has become the hallmark of the Hearing Officer corps, without correcting this unfair and inappropriate salary structure.

The Division, between October, 1983, and June, 1984, will lose four Hearing Officers, including the Director, to resignation. A primary cause of this loss is that after years of dedicated service, these Hearing Officers can no longer ignore the fact that they are seriously underpaid for their services to the state

and that in the private sector or elsewhere in the public sector, they will not be underpaid. In addition to those four, it is probable that in the near future several other experienced Hearing Officers may feel compelled to resign because of the insufficient salary structure. Until now the corps of Hearing Officers has been very stable. Because of the depth and breadth of their responsibilities, this stability is necessary to create the depth of experience and knowledge required to properly conduct the business of the Division. This stability is, perhaps, at an end. Unless the Hearing Officers are better compensated, the Division may become the typical revolving door for lawyers into and out of state service.

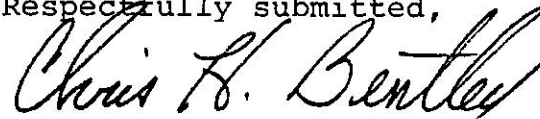
In order to meet the work load needs cited above the Division has asked this Legislature for 4 additional Hearing Officers, 2 Senior Secretaries (Secretary IV's), 2 Clerk Typist III's for the Clerk's Office and a Senior Administrative Assistant to function, in effect, as a Court Administrator, thus releasing the Assistant Director and Director to conduct more hearings. If these additional personnel are forthcoming, the work load excesses now experienced by the Division will be lessened. In addition, the Division has ordered and is expecting delivery soon of word processing equipment that will allow the Secretaries to greatly increase their productivity while at the same time encourage the Hearing Officers to timely refine their orders. The new equipment will also provide a data processing function and thereby

eliminate the need for more than 2 additional Clerk Typists in the Clerk's Office.

RECOMMENDATIONS FOR CHANGE IN THE ADMINISTRATIVE PROCEDURE ACT

The Division restates its prior position expressed in the 1981 Annual Report that specific 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.

Respectfully submitted,



CHRIS H. BENTLEY, Director  
Division of Administrative Hearings

Attachment:

Analysis of Agency Requests  
for Hearing Officers for  
Calendar Year 1983

DIVISION OF ADMINISTRATIVE HEARINGS

ANALYSIS OF AGENCY REQUESTS FOR HEARING  
OFFICERS FOR CALENDAR YEAR 1983

<u>AGENCY</u>	<u>NO. OF CASES</u>
<u>DEPARTMENT OF ADMINISTRATION</u> .....	19
Division of Administrative Hearings .....	1
Career Service Commission .....	2
Human Relations Commission .....	34
Division of Retirement .....	20
<u>DEPARTMENT TOTAL:</u> .....	<u>76</u>
<u>DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES</u> .....	<u>34</u>
<u>DEPARTMENT OF BUSINESS REGULATION</u>	
Division of Alcoholic Beverages and Tobacco .....	173
Division of Hotels and Restaurants .....	32
Division of Florida Land Sales and Condominiums .....	92
Division of Pari-Mutuel Wagering .....	10
<u>DEPARTMENT TOTAL:</u> .....	<u>307</u>
<u>CITY OF CLEARWATER</u> .....	<u>22</u>
<u>DEPARTMENT OF COMMUNITY AFFAIRS</u> .....	<u>6</u>
<u>OFFICE OF COMPTROLLER</u> .....	30
Department of Banking and Finance .....	16
Division of Securities .....	4
<u>OFFICE TOTAL:</u> .....	<u>50</u>
<u>DEPARTMENT OF CORRECTIONS</u> .....	<u>29</u>
<u>DEPARTMENT OF EDUCATION</u> .....	2
Alachua County School Board .....	7
Bay County School Board .....	1
Bureau of Blind Services .....	1
Bradford County School Board .....	2
Brevard County School Board .....	2
Broward County School Board .....	19
Citrus County School Board .....	1
Clay County School Board .....	3
Collier County School Board .....	2
Dade County School Board .....	65
Duval County School Board .....	6
Education Practices Commission .....	76
Escambia County School Board .....	2
Flagler County School Board .....	1
Florida A & M University .....	2
Florida State University .....	3
Board of Independent Colleges & Universities .....	4
Jackson County School Board .....	1
Leè County School Board .....	2

Analysis of Cases Opened  
 Calendar Year 1983  
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Leon County School Board .....	3
Levy County School Board .....	1
Okaloosa County School Board .....	1
Orange County School Board .....	3
Osceola County School Board .....	1
Palm Beach County School Board .....	13
Pinellas County School Board .....	5
Polk County School Board .....	3
Putnam County School Board .....	1
St. Lucie County School Board .....	3
Santa Rosa County School Board .....	1
Seminole County School Board .....	1
State University System .....	1
Suwannee County School Board .....	1
University of Florida .....	1
University of South Florida .....	1
Washington County School Board .....	1
DEPARTMENT TOTAL: .....	<u>243</u>
<u>DEPARTMENT OF ENVIRONMENTAL REGULATION</u> .....	<u>273</u>
<u>ETHICS COMMISSION</u> .....	<u>1</u>
<u>FLORIDA GAME AND FRESH WATER FISH COMMISSION</u> .....	<u>1</u>
<u>DEPARTMENT OF GENERAL SERVICES</u> .....	<u>7</u>
<u>OFFICE OF THE GOVERNOR</u>	
Florida Land and Water Adjudicatory Commission .....	10
OFFICE TOTAL: .....	<u>10</u>
<u>DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES</u>	
Office of Community Medical Facilities .....	24
Office of Entomology .....	1
Office of Licensure and Certification .....	1
Miscellaneous .....	581
NON-BAKER ACT TOTAL: .....	<u>607</u>
Anclote Manor Hospital .....	49
Florida State Hospital .....	601
Horizon Hospital .....	1
Northeast Florida State Hospital .....	16
South Florida State Hospital .....	85
West Florida Community Care Center .....	7
G. Pierce Wood Memorial Hospital .....	96
BAKER ACT TOTAL: .....	<u>855</u>
DEPARTMENT TOTAL: .....	<u>1,451</u>
<u>DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES</u> .....	<u>13</u>

<u>DEPARTMENT OF INSURANCE AND TREASURER</u> .....	<u>150</u>
<u>DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY</u>	
Division of Employment and Training .....	20
Public Employees Relations Commission.....	<u>1</u>
DEPARTMENT TOTAL:.....	<u>21</u>
<u>DEPARTMENT OF LAW ENFORCEMENT</u> .....	<u>25</u>
<u>DEPARTMENT OF LEGAL AFFAIRS</u> .....	<u>6</u>
<u>DEPARTMENT OF NATURAL RESOURCES</u> .....	<u>16</u>
<u>NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT</u> .....	<u>2</u>
<u>FLORIDA PAROLE AND PROBATION COMMISSION</u> .....	<u>11</u>
<u>DEPARTMENT OF PROFESSIONAL REGULATION</u> .....	2
Board of Accountancy .....	10
Acupuncture.....	20
Board of Architecture .....	10
Barbers Board .....	12
Board of Chiropractic Examiners .....	42
Florida Construction Industry Licensing Board.....	204
Board of Cosmetology .....	35
Board of Dentistry .....	41
Florida Electrical Contractors Licensing Board.....	20
Board of Funeral Directors and Embalmers .....	6
Hearing Aid Specialists .....	1
Board of Land Surveyors .....	1
Board of Landscape Architecture .....	3
Marriage and Family Therapists .....	4
Board of Massage .....	6
Board of Medical Examiners .....	118
Mental Health Counselors .....	5
Board of Naturopathic .....	1
Board of Nursing .....	101
Board of Nursing Home Administrators.....	11
Board of Opticianry .....	17
Board of Optometry .....	28
Board of Osteopathic Medical Examiners .....	10
Board of Pharmacy .....	65
Board of Pilot Commissioners .....	5
Board of Podiatry .....	6
Board of Professional Engineers .....	16
Board of Psychology Examiners .....	8
Florida Real Estate Commission.....	169
Board of Veterinary Medicine .....	<u>4</u>
DEPARTMENT TOTAL:.....	<u>981</u>

Analysis of Cases Opened  
Calendar Year 1983  
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<u>PUBLIC SERVICE COMMISSION</u> .....	<u>3</u>
<u>DEPARTMENT OF REVENUE</u> .....	<u>37</u>
<u>ST. JOHNS RIVER WATER MANAGEMENT DISTRICT</u> .....	<u>9</u>
<u>SOUTH FLORIDA WATER MANAGEMENT DISTRICT</u> .....	<u>8</u>
<u>SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT</u> .....	<u>3</u>
<u>DEPARTMENT OF STATE</u>	
Division of Corporations .....	19
Division of Licensing .....	31
Bureau of Management Systems .....	1
<u>DEPARTMENT TOTAL:</u> .....	<u>51</u>
<u>STATE ATTORNEY</u> .....	<u>7</u>
<u>DEPARTMENT OF TRANSPORTATION</u> .....	<u>163</u>
 <u>GRAND TOTAL CALENDAR YEAR 1983</u> .....	 <u>4,027</u>