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Department of Administration

Division of Administrative Hearings

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ELEVENTH 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.

The Division of Administrative Hearings concluded its first decade of operations in 1984. During that ten-year period, the Division received a total of 29,658 separate requests for hearings, and grew from a staff of 8 to 23 Hearing Officers, plus the Director and Assistant Director. The support staff of clerical and administrative personnel has grown from 6 to 17 employees.

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It would be impossible to enumerate the many challenges that were faced by the Division during the ten-year period, but it is fair to state that the organization over the years has progressed from an "unknown quantity" to a position of full acceptance as a competent quasi-judicial tribunal by state agencies, members of the Bar, and the public. A substantial body of administrative case law has been established in the past ten years which has resulted in more knowledgeable practitioners and increased quality of orders issued by Hearing Officers. This development was due in no small part to the "pioneering" efforts of Division personnel in dealing with matters of first impression.

On April 1, 1984, a new Division Director was appointed by the Administration Commission and thereafter confirmed by the Senate, due to the resignation of the former Director to enter the private practice of law. The year also saw the departure of four other Hearing Officers. The 1984 Legislature authorized five additional Hearing Officers, including two who were specifically designated to handle Hospital Cost Containment cases under Chapter 395, Florida Statutes. By the close of 1984, all authorized Hearing Officer positions had been filled, and the availability of additional personnel coupled with internal management changes enabled the Division to close the year with no outstanding recommended or final orders that had not been issued

within the time periods set forth in the Model Rules of Procedure. Additionally, the new personnel will enable the Division to schedule cases more closely to the desired 90-day time frame from receipt of a case instead of a period closer to 120 days as was found necessary during most of 1984. This was accomplished by reducing the case load per hearing officer from approximately 120 cases to 100.

Prompter processing of cases has also been possible because the Division was able to secure data and word processing equipment late in the year. The contract for the word processing system was finalized as soon as the funds became available. The twelve work stations which were originally planned have been installed, personnel have been trained on the new system, and planning for acquisition and installation of the second phase of the project has been completed.

A delay in converting over to the new system in the clerk's office was overcome by solving the communications problems between the old and new systems. Personnel in the clerk's office have been trained in word processing and data management training has been scheduled, which will permit automated docket control for the first time. This will also permit implementation of a management information system to better utilize the resources of the division. The clerk's office will be using the new system by the end of the first quarter of

1985. The second phase of the Division's word processing and docketing system should be installed at approximately the same time.

This forty megabyte, hard disc system will permit the clerk to maintain its docket information in such a manner that secretaries can access data for names, addresses, case headings and numbers, thereby eliminating the need to retype data. It will also permit the expansion of the word processing system to accommodate 16 word processing work stations, enough for all of the Hearing Officer's secretaries and the clerk's office. The system is capable of further expansion and communication with the division's assigned main frame computer. By the end of the fiscal year the system should be installed and functioning.

Also, due to the increased personnel strength, it was necessary to convert a large hearing room to office space. This required that an additional room be obtained to serve as a hearing room. However, since the Division has asked for three additional Hearing Officers and support personnel to meet next year's normal increase in total case load, it will be necessary to either acquire additional space to supplement the present facility or to seek entirely new offices. In this regard, the Division's lease of space at the Oakland Building expires in January 1986, with an option to renew for an additional three years. It is therefore necessary that thorough consideration be

given to future space requirements at an early date. In this connection, it is anticipated that a special task force will soon be appointed by executive order of the Governor to consider not only the Division's increased demands for space and for hearing rooms locally and throughout the state, but will also look into other matters concerning future possible requirements, such as reorganization of the Division into branch offices, obtaining and retaining highly qualified Hearing Officers, determining the need for specialized Hearing Officers, and dealing effectively with a consistently increasing case load of approximately 12 percent yearly. It is believed that assistance of this type will provide definitive recommendations which will enable the Division to intelligently formulate a short and long-term plan for the future.

While the task force looks at major issues concerning the Division, planning must continue for the orderly assumption of the additional personnel requested to meet projected work increases. A major move must be considered in planning; however, courses of action which will avoid such a move will be given careful assessment because it is estimated that a major move will degrade the Division's effectiveness for at least nine months and perhaps as long as a year.

Operation of the clerk's office was greatly improved by reducing the volume of files maintained within the office by

changing the retirement schedules for closed files from twenty to five years. Approximately one-third of the files on hand were retired to state archives. Completed at the end of the summer, this reduced the number of square feet required by the Division and the number of legal cabinets needed. This change will continue to pay dividends by reducing capital costs for filing cabinets and expense for additional rented space.

For the first time in three years, the Division has had the funds available to conduct hearings when they were ready to be heard and by the Hearing Officer to whom the case was originally assigned, rather than having a restricted travel budget dictate how, when and who conducted hearings. Travel expense for the year ending 1984 has averaged \$6,000 per Hearing Officer, slightly less than the budgeted amount. The effect on morale by permitting Hearing Officers to control their travel and plan their trips has been enormously positive and has helped to reduce the backlog of cases in the office by adding a measure of predictability to scheduling of cases.

The first budget reflecting the Division's new policies was prepared and submitted for fiscal year 1985. This budget was based for the first time upon a statistical analysis of the Division's past work by FSU's data center. It is felt that the requests adequately address the realistic needs of the Division. This budget provided only for continuing existing programs and

increased only in those areas required by expanding workload. If the Division's requests are approved by the Legislature, the Division should be able to continue to improve its ability to manage its increasing caseload in a timely manner.

The Division's telephone system was at capacity in 1984, both in the number of telephones and incoming lines that could be added, when eight new positions were authorized by the legislature. The system could not handle the volume of calls that Division employees needed to place and receive and would have had to have been replaced for that reason alone, but the increase in personnel precipitated immediate acquisition of a new, larger system. Although money was appropriated for a new system in July, 1984, the Division was unable to secure administrative approvals of the various aspects of the system and its installation prior to the termination of the state contract in August, 1984. Therefore, the new telephone equipment will not be installed until February, 1985.

Although the 1984 Legislature authorized an increase in Hearing Officer pay effective July 1, 1984, the considerations stated in the Tenth Annual Report concerning the need for substantial pay raises for Hearing Officers to more equitably compensate them for the specialized nature of their services, and to reduce attrition of experienced Hearing Officers, remain true as of this date. It is a serious deficiency that should be met

soon in order for the Division to continue to attract and retain the high caliber of attorney that has become the hallmark of the Division.

UTILIZATION OF PERSONNEL

During the calendar year 1984, the Division received 4,516 separate requests for hearings. The requests are broken down by agency as reflected in the attached Analysis. In numerical terms, this represents an increase of 489 requests from calendar year 1983, and a 12 percent overall increase in the Division's caseload.

Calendar year 1984 saw the highest case load in the history of the Division. Of those cases, 1,094 were Baker Act cases and 3,422 were cases filed pursuant to Section 120.57, Florida Statutes, involving substantial interests of a party. The cases continue to involve an increased number of complex matters which are more time consuming to a Hearing Officer. The average number of new cases handled per Hearing Officer during 1984 was 214 cases. The Division has averaged an annual growth in case load of 10.5 percent for ten years of its existence, and it is anticipated that it will continue to grow at least to that extent in future years. Each Hearing Officer conducted an average of 52 hearings in 1984 and wrote an average of 47 recommended or final orders which varied in length from several pages to over fifty pages. Attached is a summary by Hearing

Officer of annual statistics regarding travel expenditures and travel time, hours and number of hearings held and case closure.

ADMINISTRATIVE PROCEDURE ACT

A number of amendments to Chapter 120, Florida Statutes, were enacted by the 1984 Legislature. Those of particular significance to the Division provide that an agency may not take further action in a case after referring it to the Division, except as a party litigant, as long as the Division retains jurisdiction of the case; and permit judicial review of preliminary or procedural interlocutory orders of a Hearing Officer. The committee report to House Bill 1225, which became Ch. 84-173, Laws of Florida (1984), makes clear the legislature's intention to overrule the First District's decision in Great American Banks, Inc. v. Division of Administrative Hearings, Department of Administration, 412 So.2d 373 (Fla. 1st DCA 1981) (reh. den. 1982), and restore the Hearing Officers' authority to impose sanctions. Another important change was the amendment of Section 120.68(12) to require all agencies to follow their own rules. No longer may parties seek to broaden the scope of a hearing to show why a clearly applicable rule should be disregarded.

Additionally, the new Florida Equal Access to Justice Act provides for the issuance of final orders by a Hearing

Officer awarding attorney's fees and costs to a prevailing small business party in any administrative proceeding pursuant to Chapter 120, which was initiated by a state agency, unless the agency's actions were substantially justified or special circumstances exist which would make the award unjust.

As a result of the above amendments to the Administrative Procedure Act, the Division has no recommendations at this time for change or improvement in the Act or as to any agency's practice or policy with respect thereto.

NEW DIVISION RULES

Beginning in June, 1984, the Division undertook a comprehensive review of Chapters 22I-1 through 4, Florida Administrative Code, which had not been revised since September of 1975, and had fallen into desuetude. The existing rules failed to apprise practitioners and the public of the current practices, procedures and organization of the Division and its Hearing Officers; they were incomplete in many particulars, outdated and at variance with the Model Rules of Procedure in important respects.

It was decided to start over from scratch rather than to stop with a few piecemeal revisions. A committee of three hearing officers devoted significant amounts of their time to

this project and virtually every Hearing Officer contributed to the ultimate product. The result has been the proposed repeal of Chapters 22I-1 through 22I-4 and the proposed adoption of new Chapters 22I-5 and 22I-6. Notices of proposed rulemaking were filed with the Secretary of State on January 23, 1985.

The new rules, which may take effect as early as the second week of March, describe the work and organization of the Division, its general course and method of operations and the means of public access. They clarify existing practices at the Division and intersperse pertinent provisions of the Model Rules. For the first time, practitioners and litigants will be able to consult a single source to discover what procedural rules govern administrative adjudication.

Respectfully submitted,

Sharyn L. Smith

SHARYN L. SMITH, Director
Division of Administrative Hearings

DIVISION OF ADMINISTRATIVE HEARINGS
 ANALYSIS OF AGENCY REQUESTS FOR HEARING
 OFFICERS FOR CALENDAR YEAR 1984

Agency.....	No. Rec'd.
Department of Administration	7
Division of Administrative Hearings.....	1
Career Service Commission.....	14
Human Relations Commission.....	59
Division of Insurance.....	19
Division of Retirement.....	20
Department Total.....	120
Department of Agriculture and Consumer Services.....	29
State Athletic Commission.....	1
Department of Business Regulation	
Division of Alcoholic Beverages and Tobacco.....	127
Division of Hotels and Restaurants.....	16
Division of Land Sales and Condominiums and Mobile Homes.....	45
Division of Pari-Mutuel Wagering.....	4
Department Total.....	192
Department of Citrus.....	1
City of Clearwater.....	18
Department of Community Affairs.....	4
Florida Housing Finance Agency.....	2
Department Total.....	6
Office of Comptroller.....	15
Department of Banking and Finance.....	23
Division of Securities.....	8
Office Total.....	46
Department of Corrections.....	65
Department of Education.....	2
Division of Blind Services.....	2
Board of Regents.....	1
Education Practices Commission.....	62
Florida Junior College of Jacksonville.....	1
Florida School for the Deaf and Blind.....	1
Florida State University.....	3
State Board of Independent Colleges and Universities.....	3
University of Central Florida.....	1
University of Florida.....	10
Alachua County School Board.....	1

Bay County School Board.....	2
Bradford County School Board.....	1
Brevard County School Board.....	5
Broward County School Board.....	12
Clay County School Board.....	3
Dade County School Board.....	80
Duval County School Board.....	4
Escambia County School Board.....	1
Gilchrist County School Board.....	1
Glades County School Board.....	1
Hamilton County School Board.....	1
Hendry County School Board.....	1
Lafayette County School Board.....	1
Lake County School Board.....	1
Lee County School Board.....	2
Madison County School Board.....	2
Marion County School Board.....	1
Martin County School Board.....	1
Monroe County School Board.....	1
Okeechobee County School Board.....	1
Orange County School Board.....	3
Osceola County School Board.....	1
Palm Beach County School Board.....	11
Pasco County School Board.....	1
Pinellas County School Board.....	11
Putnam County School Board.....	1
St. Lucie County School Board.....	1
Seminole County School Board.....	2
Volusia County School Board.....	1
Wakulla County School Board.....	1
Washington County School Board.....	1
Department Total.....	243
Englewood Water District.....	1
Department of Environmental Regulation.....	307
Florida Game and Fresh Water Fish Commission.....	1
Department of General Services.....	13
Office of the Governor.....	10
Florida Land and Water Adjudicatory Commission.....	4
Office Total.....	14
Department of Health and Rehabilitative Services	
Non-Baker Act Cases:	
Miscellaneous.....	56
Adult Congregate Living Facilities.....	7
Audit Services.....	11
Office of Entomology.....	3
Office of Radiological Health Services.....	1
Office of License Certification.....	94
Office of the Secretary of Refugee Administration..	1

Program Development for Aging and Adult Services...	1
Program Development for Medicaid Disputes.....	36
Program Development for Children Medical Facilities	5
Program Development for Children, Youth & Families.	11
Program Development for Community Medical Facilities	551
Program Development for Developmental Services.....	2
Program Development for Economic Services.....	44
Program Development for Health.....	28
Program Development for Mental Health.....	1
Program Development for Vocational Rehabilitation..	2
Non-Baker Act Total.....	854
Baker Act Cases:	
Anclote Manor Hospital.....	46
Florida State Hospital.....	795
G. Pierce Wood Memorial Hospital.....	104
James A. Haley Veterans Hospital.....	1
Northeast Florida State Hospital.....	21
Sarasota Palms Hospital.....	5
South Florida State Hospital.....	115
West Florida Community Care Center.....	7
Baker Act Total.....	1,094
Department Total.....	1,948
Department of Highway Safety and Motor Vehicles.....	24
Department of Insurance and Treasurer.....	104
Hospital Cost Containment Board.....	4
Department Total.....	108
Department of Labor and Employment Security.....	11
Public Employees Relations Commission.....	1
Department Total.....	12
Department of Law Enforcement	
Criminal Justice Standards and Training Commission.	51
Department Total.....	51
Department of Legal Affairs.....	3
Department of Natural Resources.....	27
Florida Parole and Probation Commission.....	7
Department of Professional Regulation	
Board of Accountancy.....	14
Board of Architecture.....	10
Barbers Board.....	14
Board of Chiropractic Examiners.....	7
Clinical Social Workers.....	1
Florida Construction Industry Licensing Board.....	242
Board of Cosmetology.....	39
Board of Dentistry.....	32

Direct Disposers.....	1
Electrical Contractors Licensing Board.....	29
Board of Funeral Directors and Embalmers.....	6
Board of Hearing Aid Specialists.....	2
Board of Land Surveyors.....	19
Board of Landscape Architecture.....	1
Marriage and Family Therapists.....	1
Board of Massage.....	4
Board of Medical Examiners.....	70
Mental Health Counselors.....	2
Board of Naturopathic.....	1
Board of Nursing.....	58
Board of Nursing Home Administrators.....	9
Board of Opticianry.....	6
Board of Optometry.....	22
Board of Osteopathic Medical Examiners.....	10
Paramedics.....	1
Board of Pharmacy.....	46
Board of Pilot Commissioners.....	8
Board of Podiatry.....	6
Board of Professional Engineers.....	19
Board of Psychological Examiners.....	12
Florida Real Estate Commission.....	163
Board of Veterinary Medicine.....	6
Department Total.....	861
Public Service Commission.....	3
Department of Revenue.....	37
St. Johns River Water Management District.....	4
South Florida Water Management District.....	11
Southwest Florida Water Management District.....	2
Department of State	
Bureau of Administrative Code.....	1
Division of Archives, History and Records Management.....	3
Division of Corporations.....	25
Division of Licensing.....	14
Department Total.....	43
State Attorney.....	3
Department of Transportation.....	315
GRAND TOTAL.....	4,516

1984 CALENDAR YEAR *NOTE* Figures for "Other" and Baker Act closures include April-December only as figures for January-March were unavailable. Total closures include all closures but the unavailable figures. The number of Hearing Officers averaged 21.08 in 1984

HRG. OFF.	PER DIEM	P.O.V.	MISC.	AIRLINE	RENTAL CAR	TOTAL TRAVEL	DAYS OUT OFC.	NTS. ON ROAD	BEFORE 8, AFTER 5 HOURS	HOURS HEARING		# HEARINGS		# CLOSED PER:					
										Reg.	B. Act	Reg.	B. Act	REGULAR		BAKER ACT			
														R.O.	F.O.	Dth.	Tot.	F.O.	Dth.
CCA	1693.00	2190.00	112.98	468.00	170.99	4634.97	48.00	22.00	92.00	304.00	0	73	0	51	3	83	137	0	0
DRA	3459.00	5220.20	251.82	0	0	8931.02	82.41	50.00	271.75	384.00	102.75	67	630	57	2	103	162	389	19
KVA	3358.00	2952.00	42.76	98.00	50.75	6501.51	68.50	50.00	66.50	305.00	0	104	0	95	18	122	235	0	0
CHB	233.50	196.20	41.04	142.00	25.60	638.34	1.25	1.00	0	7.00	0	0	0	3	0	n/a	3	0	0
RTB	918.52	1172.00	59.27	1159.00	370.73	3679.52	33.50	12.00	80.50	234.25	11.00	45	18	28	11	74	113	15	3
JEB	2838.50	734.20	339.17	2016.00	1488.83	7416.70	58.50	51.00	113.25	198.00	32.00	56	94	46	9	48	103	64	13
RLC	1538.00	281.40	133.22	2408.00	467.82	4828.44	29.00	20.00	64.50	182.00	0	34	0	46	8	72	126	0	0
RTC	2285.50	488.00	145.89	3095.00	879.28	6893.67	56.75	35.00	53.50	249.25	0	65	0	52	5	97	154	0	0
WRC	331.00	143.40	10.00	210.00	43.05	737.45	5.50	6.00	16.00	38.50	0	5	0	0	0	5	5	1	0
MEC	921.50	772.40	78.02	753.00	494.18	3019.10	27.50	15.00	51.00	165.50	0	27	0	27	12	56	95	0	0
DAG	130.50	90.80	0	439.00	32.85	693.15	3.50	2.00	12.00	18.50	0	5	0	1	0	9	10	0	0
EJD	548.50	236.00	28.33	724.00	197.80	1734.63	14.00	12.00	23.75	97.50	4.25	10	2	1	0	44	45	0	0
SFD	1226.50	307.20	383.98	4037.00	848.42	6803.10	37.00	15.00	62.50	171.00	0	43	0	36	0	87	123	0	0
MPD	21.00	0	18.02	0	0	39.02	0	0	0	0	0	0	0	7	0	n/a	7	0	0
PPF	0	0	0	602.00	0	602.00	0	0	0	0	0	0	0	0	0	0	0	0	0
JLJ	2067.90	984.60	313.56	3495.00	726.16	7587.23	60.00	34.00	121.75	291.50	0	88	0	65	3	78	146	0	0
WJK	900.00	22.40	168.75	1413.00	292.28	2796.43	15.60	15.00	31.50	87.50	0	14	0	10	2	32	44	0	0
DKK	1491.50	587.20	134.48	2296.00	441.41	4950.59	34.00	24.00	48.00	163.50	0	37	0	27	5	117	149	0	0
TCO	256.50	469.20	19.02	0	0	744.72	9.00	2.00	16.00	48.25	0	11	0	13	2	15	30	0	0
MMP	2153.00	185.40	337.85	3863.00	978.92	7518.17	51.75	36.00	151.00	365.75	0	44	0	27	0	68	95	0	0
AHP	1370.00	2435.20	94.13	1562.00	202.70	5664.03	47.00	14.00	101.75	263.00	0	67	0	67	1	112	180	0	0
LMR	2107.40	44.80	194.59	3538.00	886.57	6771.36	35.75	39.00	69.50	226.75	0	41	0	36	1	91	128	0	0
PMR	2781.50	900.20	219.82	6109.00	1429.85	11,440.37	73.00	31.00	186.50	343.75	44.50	59	84	37	0	66	103	42	24
LJS	104.50	83.00	14.46	655.00	68.75	925.71	4.00	1.00	13.50	32.75	0	10	0	0	0	6	6	0	0
WCS	424.50	14.40	96.14	851.00	223.65	1609.69	11.00	6.00	30.75	77.00	0	6	0	2	1	3	6	0	0
SLS	800.50	72.80	335.40	2381.00	449.65	4039.35	16.50	15.00	41.50	75.50	0	19	0	32	2	25	59	0	0
MBT	1892.78	1653.20	166.47	3082.00	653.48	7447.93	54.50	28.00	64.25	203.25	0	90	0	36	0	111	147	0	0
DOT	1422.00	178.20	173.95	2503.00	603.06	4880.21	33.00	17.00	58.50	271.25	0	53	0	33	7	76	116	0	0
MEW	507.00	385.80	61.79	716.00	122.81	1793.40	12.50	8.00	18.00	140.50	0	27	0	42	23	42	107	0	0
TOTALS	37,782.10	22,800.20	3974.91	48,615.00	12,149.59	125,321.80	922.91	561.00	1859.75	4944.75	194.50	1100	828	877	115	1642	2634	511	570
AVG/HO	1792.32	1081.60	188.56	2306.21	576.36	5945.06	43.78	26.61	88.22	234.57	9.23	52.18	39.28	41.6	5.46	77.89	124.95	2424	2.60