



State of Florida
Division of Administrative Hearings
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Sharyn L. Smith
Director

Ann Cole
Clerk

February 1, 1993

NINETEENTH 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.

GENERAL

Caseload of the Department of Management Services (DMS), which is comprised of the former Departments of General Services (DGS) and Administration (DOA), increased by 33 percent with a total of 256 DMS cases filed, up from the DOA-DGS combined 1991 agency total of 193 cases filed. Significant caseload increases for this Agency include the Human Relations

Commission's total which increased from 83 in 1991 to 147 in 1992, an increase of 77 percent.

The Department of Health and Rehabilitative Services' referral of child abuse cases steadily increased to 950 cases filed in 1992, up 27 percent from 750 cases filed in 1991.

The number of Exceptional Education cases filed also increased from 39 cases filed in 1991 to 45 cases filed in 1992, an increase of 15 percent. This 15 percent increase is also reflected in the 127 School Board cases filed in 1992, up from 110 cases filed in 1991.

Ethics Commission cases, which were newly tracked in 1991, increased to 24 cases filed in 1992, up from 21 cases in 1991, an increase of 14 percent for this agency.

In 1992 the Division entered into ten contracts with various governmental entities with 35 contract cases being filed during this past year. The contract cases have increased by 35 percent over the 26 contract cases filed in 1991.

Requests for Hearing Officer services in 1992 totaled 7,729, which is an eight percent decrease over 1991's grand total of 8,403 cases filed. Significant to this decrease is the number of Baker Act cases filed, which decreased from 3,648 filed in 1991 to 3,392 filed in 1992, a decrease of seven percent. Filing of Department of Corrections, prisoner Rule Challenges was eliminated during the latter part of 1992. In 1991 there were 64 Department of Corrections prisoner Rule Challenges cases filed; 50 were filed in 1992, a decrease of 22 percent. Cases filed under the newly formed Agency for Health Care Administration,

which includes the Health Care Cost Containment Board, Office of Licensure and Certification, and Certificate of Need cases, decreased eight percent, with a total of 316 cases filed in 1992, down from the 345 cases filed in 1991.

UTILIZATION OF PERSONNEL

The Division has 62 established positions comprised of the Director, Assistant Director, 30 Hearing Officers, 1 Division Clerk, 1 Administrative Services Director, 1 Executive Assistant, 1 Accountant, 1 Purchasing Agent, 1 Personnel Officer, 3 Administrative Assistants, 1 Computer Programmer Analyst, 1 Computer Operator, 5 Staff Assistants, 11 Administrative Secretaries, 1 Senior Word Processing Systems Operator, and 2 Senior Clerks.

WORKLOAD INCREASES

During calendar year 1992, the Division processed 7,729 hearing requests, a decrease of 674 cases (eight percent) from the 8,403 filed in 1991. The cases opened are itemized by agency in the attached Appendix 1.

Of the 7,729 cases, 3,392 were Baker Act cases. The remaining cases were filed pursuant to Section 120.54, 120.56, and 120.57, Florida Statutes. In 1992, each Hearing Officer handled an average of 162 new cases, conducted an average of 103 hearings, and wrote an average of 91 recommended or final orders of varying length and complexity.

In 1992, the Division held a total of 5,038 hearings, 239 hearings less than the 5,277 hearings held in 1991. During

the year, the Division closed 7,901 cases, an average of 161 closures per Hearing Officer.

OFFICE AUTOMATION

The primary systems applications for the Division are office automation, a customized Case Tracking System (CTS), and a full text retrieval and indexing system for all recommended and final orders (ACCESS). Secondary applications include computerized Florida Statutes, electronic mail, and an automated desk calendar. During 1992, the Division continued to upgrade workstations by trading in older-style processors for 80286 or better workstations and by adding memory to all workstations. Additional disk space, memory and tape backup drives were added to the Division's shared resource processor, a Unisys XE530.

OPERATING BUDGET

Appendix 2 summarizes the Division's actual and estimated expenditures for FY 1991-92 and FY 1992-93, respectively. Appendix 2 also outlines funds requested in the Division's FY 1993-94 Legislative Budget Request.

Since FY 1987-88, the Division has conducted studies to determine a more equitable method of apportioning its operating costs among all users. The Division is responsible for preparing annual reports which summarize the number of hours scheduled by agencies for prehearing conferences, motion hearings, cancelled/continued hearings, and final hearings.

In July, 1992, the Division submitted the results of its sixth annual study to the Legislature and Executive Office of

the Governor (see Appendix 3). In FY 1991-92, agencies scheduled a total of 31,056 hearing hours with the Division, an increase of 5.56 percent over 1990-91's 29,419 hearing hours scheduled. Of the 31,056 hours scheduled in FY 1991-92, the Division's Hearing Officers actually spent 9,028 hours in administrative proceedings, a decrease of 1.84 percent under the 9,197 hours expended in 1990-91. In FY 1991-92, 22,028 hearing hours scheduled were cancelled or continued, an increase of 8.93 percent over the 20,222 hours cancelled in 1990-91.

In FY 1992-93, the Division will receive 100 percent of its approved operating budget from the agencies it serves. It should be noted, however, that due to a lawsuit filed in early FY 1991-92 by school districts against the State Board of Education, the Legislature, and the Division challenging the constitutionality of the laws providing fund transfers from the school districts to the Division, the posture of the Division's Administrative Trust Fund is uncertain.

RECOMMENDATIONS CONCERNING THE A.P.A.

The Division has no current recommendations concerning the Administrative Procedure Act.

Respectfully submitted,



SHARYN L. SMITH
Director of Administrative
Hearings

SLS/csm

DIVISION OF ADMINISTRATIVE HEARINGS

**ANALYSIS OF AGENCY REQUEST FOR
HEARING OFFICERS FOR CALENDAR YEAR 1992**

Agency	Jan-June	Jul-Dec	TOTAL
Department of Agriculture and Consumer Services.....	6	9	15
Agriculture - Produce Disputed Cases.....	15	17	32
Department Total.....	21	26	47
Department of Business Regulation			
Division of Alcoholic Beverages and Tobacco.....	54	66	120
Division of Hotels and Restaurants.....	5	0	5
Division of Land Sales Condos. and Mobile Homes....	12	9	21
Division of Pari-Mutuel Wagering.....	11	1	12
Department Total.....	82	76	158
Department of Commerce.....	0	1	1
Department of Community Affairs.....	72	59	131
Florida Housing Finance Agency.....	2	1	3
Department Total.....	74	60	134
Office of Comptroller			
Department of Banking and Finance.....	26	26	52
Citrus Canker.....	1	0	1
Division of Securities.....	6	7	13
Department Total.....	33	33	66
Contract Hearings			
City of Clearwater.....	7	3	10
Clay County.....	0	3	3
Hillsborough County.....	0	3	3
Jacksonville Transportation Authority.....	0	1	1
Leon County.....	1	0	1
Pinellas Planning Council.....	1	0	1
Pinellas Construction Licensing Board.....	2	5	7
Seminole County.....	1	0	1
City of Tallahassee.....	2	0	2
Tampa Bay Regional Planning Council.....	0	6	6
Contract Hearing Total.....	14	21	35
Department of Corrections.....	50	14	64
Mental Health Institute.....	9	19	28
Department Total.....	59	33	92

Appendix 1

Department of Education.....	1	0	1
Division of Blind Services.....	0	1	1
Board of Independent Colleges and Universities.....	0	1	1
Broward Community College.....	0	2	2
Education Practices Commission.....	30	39	69
EPC, Declaration of Default.....	13	11	24
Board of Regents.....	3	0	3
Florida State University.....	0	6	6
School for the Deaf and Blind.....	0	1	1
University of Florida.....	2	2	4
University South of Florida.....	0	1	1
Department of Education Total.....	49	64	113
School Board Cases, includes 45 Exceptional Education Cases, filed			
Alachua County School Board.....	0	1	1
Bay County School Board.....	1	0	1
Bradford County School Board.....	1	0	1
Brevard County School Board.....	4	2	6
Broward County School Board.....	5	6	11
Collier County School Board.....	1	0	1
Dade County School Board.....	14	15	29
Duval County School Board.....	3	0	3
Escambia County School Board.....	0	1	1
Franklin County School Board.....	0	1	1
Gadsden County School Board.....	1	0	1
Hillsborough County School Board.....	1	1	2
Indian River County School Board.....	0	1	1
Jackson County School Board.....	0	1	1
Lee County School Board.....	0	2	2
Leon County School Board.....	5	3	8
Levy County School Board.....	0	1	1
Manatee County School Board.....	0	1	1
Monroe County School Board.....	1	0	1
Nassau County School Board.....	1	0	1
Orange County School Board.....	2	5	7
Osceola County School Board.....	1	0	1
Palm Beach County School Board.....	4	3	7
Pasco County School Board.....	1	0	1
Pinellas County School Board.....	15	9	24
St. Lucie County School Board.....	0	1	1
Sarasota County School Board.....	0	1	1
Seminole County School Board.....	5	2	7
Suwannee County School Board.....	1	0	1
Volusia County School Board.....	2	0	2
Union County School Board.....	1	0	1
School Board Total.....	70	57	127
Department Grand Total.....	119	121	240
Department of Environmental Regulation.....	204	141	345
Ethics Commission.....	7	17	24
Florida Game and Fresh Water Fish Commission.....	1	2	3

Appendix 1

Office of the Governor.....	1	1	2
Florida Land and Water Adjudicatory Commission.....	14	16	30
Department Total.....	15	17	32
Department of Health and Rehabilitative Services			
Non-Baker Act Cases:			
Miscellaneous.....	31	15	46
Audit Services.....	24	42	66
DHRS-Child Abuse Cases.....	457	493	950
Developmental Services Program.....	2	1	3
Emergency Medical Services.....	1	0	1
Health Program Office.....	13	18	31
Health Program Office Pharmacy.....	0	1	1
Office of Central Administrative Services.....	20	16	36
Office of Entomology.....	3	0	3
Office of Personnel.....	4	1	5
Office of Radiological Health Services.....	0	5	5
Program Development for Children, Youth and Families.....	11	14	25
Program Development for Medicaid Disputes.....	28	22	50
Program Development for Aging and Adult Services...	1	1	2
Non-Baker Act Total.....	595	629	1224
Baker Act Cases:			
Anclote Manor Hospital.....	2	2	4
Broward County Mental Health Center.....	14	11	25
Florida State Hospital.....	487	454	944
G. Pierce Wood Memorial Hospital.....	461	404	865
James A. Haley Veterans Hospital.....	0	3	3
Northeast Florida State Hospital.....	516	466	982
South Florida State Hospital.....	268	301	569
West Florida Community Care Center.....	1	2	3
Baker Act Total.....	1749	1643	3392
Department Grand Total.....	2344	2272	4619
Department of Highway Safety and Motor Vehicles.....	24	33	57
Department of Insurance and Treasurer.....	107	78	185
Insurance - Rate/Auto Cases.....	1	0	1
Medical Arbitration.....	1	1	2
Department Total.....	109	79	188
Department of Labor and Employment Security.....	4	7	11
Bureau of Agricultural Programs.....	10	0	10
Bureau of Self Insurance.....	2	0	2
Division of Employment and Training.....	2	10	12
Division of Vocational Rehabilitation.....	4	2	6
Division of Workers Compensation.....	3	10	13
Department Total.....	25	29	54
Department of Law Enforcement			
Criminal Justice Standards and Training Commission.....	30	25	55
Victims Compensation.....	4	0	4
Department Total.....	34	25	59
Department of Legal Affairs.....	0	1	1

Appendix 1

Department of Management Services, formerly filed with Department of General Services.....	40	45	85
Cases formerly filed with Department of Administration:			
Abandonment of Position.....	2	0	2
Human Relations Commission.....	95	52	147
Division of State Employee Insurance.....	4	6	10
Division of Retirement.....	11	1	12
Department Total.....	152	104	256
Department of Natural Resources.....	25	22	47
Marine Fisheries Commission.....	1	4	5
Department Total.....	26	26	52
Parole and Probation Commission.....	4	2	6
Department of Professional Regulation, miscellaneous.			
Board of Accountancy.....	8	2	10
Board of Accupuncture.....	6	6	12
Board of Architecture.....	1	1	2
Board of Auctioneers.....	10	4	14
Barbers Board.....	1	0	1
Board of Barbers.....	2	3	5
Board of Chiropractic Examiners.....	12	8	20
Construction Industry Licensing Board.....	50	32	82
Board of Cosmetology.....	22	9	31
Board of Dentistry.....	29	28	57
Electrical Contractors Licensing Board.....	1	1	2
Florida Real Estate Commission.....	92	80	172
Board of Funeral Directors and Embalmers.....	3	0	3
Hearing Aid Specialists.....	1	0	1
Board of Land Surveyors.....	5	2	7
Board of Landscape Architects.....	7	0	7
Marriage and Family Therapists.....	1	0	1
Board of Massage.....	2	3	5
Board of Medical Examiners.....	56	55	111
Board of Mental Health Counselors.....	1	2	3
Board of Nursing.....	5	12	17
Board of Opticianry.....	2	1	3
Board of Optometry.....	5	6	11
Board of Osteopathic Medical Examiners.....	3	1	4
Board of Pharmacy.....	8	13	21
Board of Pilot Commissioners.....	3	0	3
Board of Podiatry.....	3	1	4
Board of Professional Engineers.....	9	2	11
Board of Psychological Examiners.....	3	4	7
Board of Physical Therapists.....	1	4	5
Board of Veterinary Medicine.....	0	3	3
Board Total.....	352	283	635
Agency for Health Care Administration, formerly filed with DHRS			
Healthcare Cost Containment Board.....	13	5	18
Office of Licensure and Certification.....	67	49	116
Certificate of Need Cases, formerly DHRS, Office of Community Medical Facilities.....	83	99	182
Agency Total.....	163	153	316
Department Grand Total.....	515	436	951

Appendix 1

Public Service Commissions.....	3	2	5
Department of Revenue.....	49	47	96
Department of State.....	0	1	1
Division of Licensing.....	31	38	69
License Denial Cases.....	10	11	21
Department Total.....	41	50	91
Department of Transportation.....	43	32	75
DOT - Sign Cases.....	7	12	19
Department Total.....	50	44	94
Water Management Districts			
Florida Keys Aqueduct Authority.....	0	1	1
St. Johns River Water Management District.....	0	5	5
South Florida Water Management District.....	0	7	7
Southwest Florida Water Management District.....	0	10	10
Suwannee River Water Management District.....	0	2	2
West Coast Regional Water Supply Authority.....	0	1	1
Water Management District Total.....	0	26	26
NON-BAKER ACT TOTAL.....	2256	2081	4337
GRAND TOTAL.....	4005	3724	7729

SUMMARY

Division of Administrative Hearings
Actual and Estimated Expenditures
and Legislative Budget Request

<u>Appropriation Category</u>	<u>Actual Expenditures FY 1991-92</u>	<u>Estimated Expenditures FY 1992-93</u>	<u>Requested FY 1993-94</u>
Salaries & Benefits	\$3,715,487	\$3,761,728	\$3,722,404
Other Personal Services	44,751	210,630	214,375
Expenses	652,035	695,551	725,057
Operating Capital Outlay	<u>114,979</u>	<u>16,180</u>	<u>59,191</u>
TOTAL	<u>\$4,527,252</u>	<u>\$4,684,089</u>	<u>\$4,721,027</u>
 Positions	 62	 62	 62

09-00-92

HOURS SCHEDULED BY AGENCY
 FY 1991-92 Apportionment Study - Final Report
 For the Period 7/1/91 through 6/30/92

AGENCY	FIG. CONF.	MOTION HRG.	CANC/CONT HEARING	FINAL HEARING	TOTAL HOURS	% OF TOTAL HOURS	% OF 9194 LBR ADJUSTED FOR PIPELINE HRGS*	% OF 9394 LBR - FINAL REQUEST
AGR	2.00	2.75	255.50	53.25	313.50	1.01118%	\$46,454	\$46,454
CMP	50.50	27.50	961.00	171.00	1,210.00	3.90282%	\$179,296	\$179,296
COR	0.50	3.50	241.00	112.25	357.25	1.15230%	\$52,936	\$52,936
DBR	2.50	12.75	728.00	200.75	944.00	3.04484%	\$139,881	\$139,881
DCA	7.50	18.75	1,767.00	527.50	2,320.75	7.48551%	\$343,886	\$343,886
DER*	70.85	61.75	2,206.00	606.25	2,944.85	9.49852%	\$436,364	\$563,370
DGS	0.75	3.00	283.00	36.25	323.00	1.04183%	\$47,862	\$47,862
DLA	1.00	1.00	10.00	2.50	14.50	0.04677%	\$2,149	\$2,149
DLE	4.00	16.75	415.00	234.75	670.50	2.16268%	\$99,354	\$99,354
DNR	2.00	12.30	312.00	268.50	594.80	1.91851%	\$88,136	\$88,136
DOA	4.00	19.25	506.50	313.25	843.00	2.71907%	\$124,915	\$124,915
DOE	1.75	6.25	554.00	148.00	710.00	2.29008%	\$105,207	\$105,207
EDU	11.50	27.50	584.00	434.75	1,057.75	3.41174%	\$156,736	\$156,736
DOS	4.00	10.00	263.25	41.75	319.00	1.02892%	\$47,269	\$47,269
DOT	838.44	80.35	531.06	202.95	1,652.80	5.33105%	\$244,910	\$244,910
DPR	35.50	136.05	4,553.00	984.20	5,708.75	18.41339%	\$845,915	\$845,915
ETH	0.00	3.00	58.50	63.55	125.05	0.40334%	\$18,530	\$18,530
FWF	0.00	0.50	8.00	8.25	16.75	0.05403%	\$2,482	\$2,482
GOV	3.50	0.00	54.00	0.00	57.50	0.18546%	\$8,520	\$8,520
HRS	80.75	196.25	5,688.50	2,059.85	8,025.35	25.88551%	\$1,189,186	\$1,189,186
INS	8.00	26.00	250.00	174.85	458.85	1.48001%	\$67,992	\$67,992
LES	10.25	27.00	1,070.00	272.00	1,379.25	4.44873%	\$204,375	\$204,375
LES	3.00	3.80	157.00	38.50	202.30	0.65251%	\$29,976	\$29,976
LOT	3.25	11.50	24.00	66.75	105.50	0.34029%	\$15,633	\$15,633
PAR	0.50	0.00	0.00	4.00	4.50	0.01451%	\$667	\$667
PSC	0.25	2.25	36.00	33.25	71.75	0.23143%	\$10,632	\$10,632
REV	6.00	9.25	489.00	67.75	572.00	1.84497%	\$84,758	\$84,758
TOTAL	1,152.29	719.00	22,005.31	7,126.65	31,003.25**	100.00000%	\$4,594,021	\$4,721,027

*The Division has requested that DER transfer \$127,006 for hearings resulting from the 1992 Natural Gas Transmission Pipeline Siting Act (Issue #3100500). Funding source: application fee(s) collected by DER.

**Does not include 53 hearing hours scheduled by contract agencies.

6/30/92

KEY TO AGENCY TITLE ABBREVIATIONS

<u>Abbreviated Agency Title</u>	<u>Full Agency Title</u>
AGR	Department of Agriculture & Consumer Services
CMP	Department of Banking & Finance/Comptroller
COR	Department of Corrections
DBR	Department of Business Regulation
DCA	Department of Community Affairs
DER	Department of Environmental Regulation
DGS	Department of General Services
DLA	Department of Legal Affairs
DLE	Department of Law Enforcement
DNR	Department of Natural Resources
DOA	Department of Administration
DOE	Department of Education
EDU	School Districts and Other Educational Entities
DOS	Department of State
DOT	Department of Transportation
DPR	Department of Professional Regulation
ETH	Ethics, Commission on
FWF	Game and Fresh Water Fish Commission
GOV	Executive Office of the Governor
HRS	Department of Health & Rehabilitative Services
HSM	Department of Highway Safety & Motor Vehicles
INS	Department of Insurance and Treasurer
LES	Department of Labor and Employment Security
LOT	Department of Lottery
PAR	Parole and Probation Commission
PSC	Public Service Commission
REV	Department of Revenue