



State of Florida
Division of Administrative Hearings
The DeSoto Building, 1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675 • SunCom: 278-9675

Sharyn L. Smith
Director

Ann Cole
Clerk

February 1, 1995

TWENTY-FIRST 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

Significant case load decreases include the Department of Environmental Protection, which had 251 cases filed in 1994, down 50 percent from 501 cases filed in 1993.

The Florida Birth-Related Neurological Injury Compensation Association (NICA) filed 46 cases in 1994. This compares to 83 cases filed since the inception of the program.

These cases continue to require employees to devote a significant portion of their time to processing and appeals activities.

The number of Baker Act cases continued to decrease in 1994 by nine percent with 2,701 cases filed, down 269 cases from the 2,970 cases filed in 1993. This Baker Act decrease accounts for much of the Department of Health and Rehabilitative Services' overall agency decrease of nine percent with a total of 3,535 cases filed in 1994, down 356 cases from the 3,891 cases filed the previous year.

Cases filed by the Department of Community Affairs also decreased significantly, with a 33 percent decrease in the number of cases filed, from 109 cases filed in 1993 to 73 cases in 1994.

Effective July 1, 1994, pursuant to Chapter 93-129, Laws of Florida, and Section 20.42, Florida Statutes, the Division of Medical Quality Assurance was transferred from the Department of Business and Professional Regulation to the Agency for Health Care Administration, Division of Health Quality Assurance. In addition, pursuant to Chapter 93-129, Laws of Florida, the authority to regulate licensees and licensure previously vested in the Department of Business and Professional Regulation under Section 20.165, Florida Statutes, was also transferred to the Agency for Health Care Administration.

Referrals from the Division of Professions, DBPR, increased 36 percent from 78 cases filed in 1993 to 106 cases filed in 1994.

Referrals from the Agency for Health Care Administration, AHCA, had the most significant increase with 581

cases filed in 1994, an increase of 97 percent over the 295 cases filed in 1993. Much of this increase can be attributed to an increase in referrals from the Office of Community Medical Facilities, which handles disputes regarding Certificate of Need cases. This office referred a total of 428 cases in 1994, an increase of 82 percent over the 235 cases referred in 1993. The Division of Medical Quality Assurance was up 27 percent from 409 cases filed in 1993 to 518 cases filed in 1994.

Referrals from the Department of Agriculture and Consumer Services showed a 196 percent increase; 169 cases were filed in 1994, up 112 cases from the 57 filed in 1993.

Referrals from the Department of Insurance and Treasurer also increased significantly, 85 percent, from 163 filed in 1993 to 301 filed in 1994.

Although the number of school Board cases only increased 24 percent, the number of requests for hearings regarding placement of exceptional students increased 76 percent from 42 filed in 1993 to 74 filed in 1994.

For the first time, 27 cases were filed in 1994 by the Commission on Minority Economic and Business Development.

Effective July 1, 1994, the Legislature appropriated \$231,018 and three positions for the Division to implement an in-house court reporting pilot program to provide court reporting services to all state agencies for administrative hearing proceedings and other proceedings, including depositions. The Division shall, in cooperation with the Office of the Attorney General, compile and submit a report to the Speaker of the House,

President of the Senate and chairmen of the House and Senate Appropriations Committees by October 1, 1995, regarding the success of the program. Recommendations for expansion or deletion of the program shall accompany this report.

UTILIZATION OF PERSONNEL

The Division has 65 established positions comprised of the Director, Assistant Director, 30 Hearing Officers, 3 Hearing Reporters, 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

During calendar year 1994, the Division processed 7,323 hearing requests, a slight increase over the 7,309 cases filed in 1993. The cases opened are itemized by agency in the attached Appendix 1.

Of the 7,323 cases, 2,701 were Baker Act cases. The remaining 4,622 cases were filed pursuant to Sections 120.535, 120.54, 120.56, and 120.57, Florida Statutes. In 1994 each Hearing Officer handled an average of 146 new cases, conducted an average of 78 hearings, and wrote an average of 70 recommended or final orders of varying length and complexity.

In 1994 the Division held a total of 4,136 hearings, 491 hearings less than the 4,627 hearings held in 1993. The

decrease in hearings reflects the continued decline in the number of Baker Act cases filed. The overall non-Baker Act case load increased seven percent with 4,622 cases filed in 1994, up 283 cases from the 4,339 non-Baker Act cases filed in 1993. A total of 1,050 non-Baker Act hearings were conducted in 1994, which is equal to the number of hearings conducted in 1993. During 1994, the Division closed 6,949 cases, an average of 131 closures per Hearing Officer.

OFFICE AUTOMATION

The primary systems applications for the Division are its Case Tracking System (CTS), word processing, and a full text retrieval and indexing system for all DOAH recommended and final orders and agency final orders (ACCESS). Secondary applications include electronic mail and phone messaging, an automated desk calendar, and computerized Florida Statutes and Florida Administrative Code.

The Division has continued to upgrade its computer hardware by replacing older-style 80286 workstations with 80386 and 80486 models that can operate both the CTOS and DOS operating systems concurrently. DOAH also upgraded its primary computer to a Pentium-based server. In addition, the Division purchased a Unisys U6000/75 UNIX system which will ultimately be the repository for the Division's database of recommended and final orders.

In conjunction with the Division's ongoing project to electronically index all recommended and final orders and

ultimately make those orders available for public access, the Division began work with the TRC Data Center to facilitate statewide access to its database.

OPERATING BUDGET

Appendix 2 summarizes the Division's actual and estimated expenditures for FY 1993-94 and FY 1994-95, respectively. Appendix 2 also outlines funds requested in the Division's FY 1995-96 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 August, 1994, the Division submitted the results of its eighth annual study to the Legislature and Executive Office of the Governor (see Appendix 3). In FY 1993-94, agencies scheduled a total of 25,445 hearing hours with the Division. Of the 25,445 hours scheduled in FY 1993-94, the Division's Hearing Officers actually spent 6,712 hours in administrative proceedings. In FY 1993-94, 18,733 hearing hours scheduled were cancelled or continued.

In FY 1994-95, it is estimated that the Division will receive 96 percent of its approved operating budget from the agencies it serves, and that it will receive four percent of its budget from the General Revenue Fund for the pilot program on court reporting services.

It should be noted that the lawsuit filed on July 8, 1991, by five 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, was appealed by the Division. On April 12, 1994, the First District Court of Appeal reversed the circuit judge's order of summary judgment declaring the statute unconstitutional and remanded with directions to enter summary judgment for DOAH.

RECOMMENDATIONS CONCERNING THE A.P.A.

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

Respectfully submitted,



SHARYN L. SMITH, Director
Division of Administrative
Hearings

SLS/cs

DIVISION OF ADMINISTRATIVE HEARINGS
ANALYSIS OF AGENCY REQUEST FOR
HEARING OFFICERS FOR CALENDAR YEAR 1994

AGENCY	Jan-June	Jul-Dec	TOTAL
Department of Agriculture and Consumer Services.....	56	70	126
Produce Disputes.....	9	13	22
Citrus Disputes.....	0	21	21
Department Total.....	65	104	169
Department of Business and Professional Regulation..	2	2	4
Division of Alcoholic Beverages and Tobacco.....	72	89	161
Construction Industry Licensing Board.....	10	46	56
Board of Accountancy.....	2	2	4
Building Code Administrators and Inspectors.....	1	0	1
Division of Hotels and Restaurants.....	2	0	2
Division of Land Sales Condos. and Mobile Homes....	17	11	28
Division of Pari-Mutuel Wagering.....	16	4	20
Board of Professional Engineers.....	11	4	15
Florida Real Estate Appraisal Board.....	0	2	2
Florida Real Estate Commission.....	76	53	129
Board of Veterinary Medicine.....	3	4	7
Department Total.....	212	217	429
Division of Professions			
Board of Architecture.....	2	3	5
Board of Auctioneers.....	7	1	8
Barbers Board.....	1	0	1
Board of Cosmetology.....	0	4	4
Electrical Contractors Licensing Board.....	7	15	22
Talent Agencies.....	0	3	3
Board of Funeral Directors and Embalmers.....	2	4	6
Board of Geologists.....	1	0	1
Hearing Aid Specialists.....	6	1	7
Board of Land Surveyors.....	31	2	33
Board of Massage	6	7	13
Board of Pilot Commissioners.....	2	1	3
Division Total.....	65	41	106
Department Grand Total.....	277	258	535
Agency for Health Care Administration.....	19	10	29
Audit Quality Control Services.....	12	19	31
Healthcare Cost Containment Board.....	1	6	7
Office of Licensure and Certification.....	20	61	81
Office of Community Medical Facilities (CON cases).	201	228	429
Board of Nursing Home Administrators.....	3	2	5
Agency Total.....	256	326	582

Division of Medical Quality Assurance			
Board of Acupuncture.....	0	1	1
Board of Chiropractic.....	10	14	24
Clinical Social Workers.....	2	0	2
Board of Dentistry.....	11	35	46
Laboratory Clinical Personnel.....	2	4	6
Exemption (Home Health).....	9	1	10
Marriage and Family Therapists.....	0	1	1
Medicaid Program Integrity.....	66	82	148
Board of Medicine.....	95	89	184
Board of Mental Health Counselors.....	1	2	3
Board of Nursing.....	32	23	55
Occupational/Physical and Respiratory Therapy.....	1	3	4
Board of Opticianry	5	0	5
Board of Optometry.....	0	4	4
Board of Osteopathic Medical Examiners.....	2	8	10
Board of Pharmacy.....	3	3	6
Podiatric Medicine.....	1	1	2
Board of Psychological Examiners.....	2	5	7
Division Total.....	242	276	518
Department Grand Total.....	498	602	1,100
Department of Citrus.....	1	0	1
Department of Commerce.....	1	0	1
Department of Community Affairs.....	37	35	72
Florida Housing Finance Agency.....	1	0	1
Department Total.....	38	35	73
Office of Comptroller			
Department of Banking and Finance.....	21	18	39
Division of Securities.....	13	11	24
Department Total.....	34	29	63
Contract Hearings			
County of Alachua.....	1	0	1
City of Clearwater.....	6	6	12
Clay County.....	3	1	4
County of Hillsborough.....	0	1	1
County of Monroe.....	5	1	6
Contract Hearing Total.....	15	9	24
Department of Corrections.....	11	7	18
Correctional Education School Authority.....	0	1	1
Mental Health Institute.....	7	10	17
Department Total.....	18	18	36

Department of Education.....	2	1	3
Division of Blind Services.....	2	3	5
School for the Deaf and Blind.....	2	0	2
Education Practices Commission.....	46	31	77
EPC, Declaration of Default.....	20	12	32
Florida State University.....	0	4	4
Gulf Coast Community College.....	0	1	1
Board of Independent Colleges and Universities.....	4	0	4
Miami-Dade Community College.....	0	1	1
Post-Secondary Voc-Tech/Trade and Business Schools.	1	0	1
Board of Regents.....	2	0	2
State University System.....	1	0	1
University of Florida.....	2	3	5
University South of Florida.....	1	0	1
Non-School Board Total.....	83	56	139
School Board Cases,			
includes Exceptional Education Cases filed; these			
figures are included in the School Board totals..	<38>	<36>	<74>
Alachua County School Board.....	2	0	2
Bay County School Board.....	1	3	4
Brevard County School Board.....	2	1	3
Broward County School Board.....	6	9	15
Citrus County School Board.....	0	2	2
Clay County School Board.....	2	0	2
Collier County School Board.....	0	1	1
Columbia County School Board.....	5	0	5
Dade County School Board.....	24	11	35
Duval County School Board.....	2	8	10
Flagler County School Board.....	3	1	4
Hillsborough County School Board.....	2	2	4
Indian River County School Board.....	0	1	1
Lee County School Board.....	1	0	1
Manatee County School Board.....	2	1	3
Marion County School Board.....	0	1	1
Martin County School Board.....	0	2	2
Monroe County School Board.....	0	1	1
Okaloosa County School Board.....	0	1	1
Orange County School Board.....	7	3	10
Palm Beach County School Board.....	9	10	19
Pinellas County School Board.....	11	10	21
Polk County School Board.....	2	2	4
Putnam County School Board.....	3	1	4
Saint Lucie County School Board.....	0	2	2
Seminole County School Board.....	6	2	8
Union County School Board.....	0	2	2
Volusia County School Board.....	1	1	2
Walton County School Board.....	1	0	1
School Board Total.....	92	78	170
Department Grand Total.....	175	134	309
Department of Elder Affairs.....	0	2	2
Department of Environmental Protection.....	135	113	248
Marine Fisheries Commission.....	2	1	3
Department Total.....	137	114	251

Ethics Commission.....	18	4	22
Florida Game and Fresh Water Fish Commission.....	1	3	4
Florida Keys Aqueduct Authority.....	0	1	1
Office of the Governor.....	1	0	1
Administration Commission.....	0	2	2
Florida Land and Water Adjudicatory Commission.....	16	24	40
Commission on Minority Economic and Business Development.....	0	27	27
Department Total.....	17	53	70
Department of Health and Rehabilitative Services			
Non-Baker Act Cases:			
Miscellaneous.....	7	3	10
Apalachee Center for Human Services.....	3	0	3
Audit Services.....	1	2	3
Child Abuse Cases.....	398	320	718
Developmental Services Program.....	4	6	10
Economic Services Program.....	1	0	1
Emergency Medical Services.....	2	6	8
Health Program Office.....	11	20	31
Health Program Office Pharmacy.....	0	2	2
Office of Central Administrative Services.....	4	6	10
Office of Personnel.....	4	0	4
Office of Radiological Health Services.....	1	0	1
Program Development for Children's Medical Services.....	0	2	2
Program Development for Children, Youth and Families.....	11	16	27
Program Development for Human Services.....	2	0	2
Program Development for Mental Health.....	1	1	2
Non-Baker Act Total.....	450	384	834
Baker Act Cases:			
Anclote Manor Hospital.....	2	2	4
Bay Mental Health Center.....	4	2	6
Bay Pines Veterans Administration Medical Center...	1	0	1
Florida State Hospital.....	351	318	669
G. Pierce Wood Memorial Hospital.....	264	321	585
Medfield Hospital.....	1	0	1
Northeast Florida State Hospital.....	442	451	893
Pinellas Emergency Mental Health Services.....	0	1	1
South Florida State Hospital.....	262	265	527
West Florida Community Care Center.....	8	6	14
Baker Act Total.....	1,335	1,366	2,701
Department Grand Total.....	1,785	1,750	3,535
Department of Highway Safety and Motor Vehicles.....	27	29	56
Indian Trail Water Control District.....	0	1	1
Department of Insurance and Treasurer.....	193	100	293
Medical Arbitration.....	3	5	8
Department Total.....	196	105	301

Department of Labor and Employment Security.....	10	3	13
Bureau of Self Insurance.....	1	1	2
Division of Employment and Training.....	7	0	7
Division of Unemployment Compensation.....	1	0	1
Division of Vocational Rehabilitation.....	4	7	11
Division of Workers Compensation.....	11	18	29
Department Total.....	34	29	63
Department of Law Enforcement.....	1	0	1
Criminal Justice Standards and Training Commission.	16	33	49
Department Total.....	17	33	50
Department of Legal Affairs.....	1	0	1
Bureau of Advocacy and Grants.....	0	4	4
Bureau of Criminal Justice Programs.....	0	1	1
Department Total.....	1	5	6
Department of Lottery.....	0	1	1
Loxahatchee River Environmental Control District....	4	0	4
Department of Management Services.....	31	5	36
Convicted Vendor List.....	4	1	5
Human Relations Commission.....	84	60	144
State Employee Insurance and Retirement.....	12	5	17
Department Total.....	131	71	202
Neurological Injury Compensation Association.....	25	21	46
Orange Seminole Osceola Transportation Authority....	0	1	1
Pinellas County Construction Licensing Board.....	1	8	9
Public Service Commission.....	1	2	3
Department of Revenue.....	51	74	125
State Board of Administration.....	10	8	18
Department of State.....			
Florida Election Commission.....	1	3	4
Division of Licensing.....	45	49	94
License Denial Cases.....	14	14	28
Department Total.....	60	66	126
Department of Transportation.....	35	38	73
Sign Disputes.....	22	19	41
Department Total.....	57	57	114
West Coast Regional Water Supply Authority.....	1	0	1

NON-BAKER ACT TOTAL.....	2,361	2,261	4,622
DOAH GRAND TOTAL.....	3,696	3,627	7,323

/ac

SUMMARY

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

<u>Appropriation Category</u>	<u>Actual Expenditures FY 1993-94</u>	<u>Estimated Expenditures FY 1994-95</u>	<u>Requested FY 1995-96</u>
Salaries & Benefits	\$3,811,726	\$4,282,647	\$4,482,890
Other Personal Services	149,550	204,019	215,524
Expenses	828,755	691,209	740,340
Operating Capital Outlay	214,912	66,259	79,789
Special Categories			
TR/Citrus Adv. TF	<u>0</u>	<u>41,129</u>	<u>41,129</u>
TOTAL	<u>\$5,004,943</u>	<u>\$5,285,263</u>	<u>\$5,559,672</u>
 Positions	 62	 65	 66

HOURS SCHEDULED BY AGENCY
 FY 1993-94 Apportionment Study - Final Report
 For the Period 07/01/93 through 6/30/94

AGENCY	PREHEARING CONFERENCE	MOTION HEARING	CANCELLED/ CONTINUED/ HEARING	FINAL HEARING	TOTAL HOURS	% OF TOTAL HOURS	% OF 9596 LBR (PRELIMINARY)
AGR	0.00	2.75	102.00	77.75	182.50	0.74700%	\$41,531
CMP	3.00	15.00	561.00	211.25	790.25	3.23462%	\$179,834
COM	0.00	1.00	24.00	0.00	25.00	0.10233%	\$5,689
COR	2.25	6.75	50.00	41.25	100.25	0.41034%	\$22,814
DBPR	10.50	22.75	1,628.75	395.50	2,057.50	8.42168%	\$468,218
DBPRAHCA	12.00	70.75	3,086.00	865.75	4,034.50	16.51386%	\$918,116
DCA	13.00	17.00	2,086.00	214.50	2,330.50	9.53911%	\$530,343
DEP	10.75	57.25	2,280.00	525.00	2,873.00	11.75965%	\$653,798
DLE	5.25	14.50	267.00	96.50	383.25	1.56870%	\$87,215
DMS	12.50	43.50	988.50	587.50	1,632.00	6.68004%	\$371,388
DOE	3.00	8.50	356.00	124.50	492.00	2.01383%	\$111,963
SCHBDS	8.75	44.75	815.00	1040.75	1909.25	7.81487%	\$434,481
DOS	6.00	15.50	240.00	72.50	334.00	1.36712%	\$76,007
DOT	3.25	10.25	403.00	116.00	532.50	2.17961%	\$121,179
ELDER	0.00	0.00	4.00	0.00	4.00	0.01637%	\$910
ETH	0.75	2.00	155.50	71.25	229.50	0.93938%	\$52,226
FWF	0.00	1.00	0.00	0.00	1.00	0.00409%	\$228
GOV	0.25	1.00	29.00	11.00	41.25	0.16884%	\$9,387
HRS	46.50	90.00	3,556.25	1,057.00	4,749.75	19.44149%	\$1,080,883
HSM	0.00	13.25	149.00	27.00	189.25	0.77463%	\$43,067
INS	6.00	23.00	498.50	188.00	715.50	2.92866%	\$162,824
LES	2.75	5.00	162.00	30.50	200.25	0.81966%	\$45,570
LOT	0.00	0.50	0.00	22.25	22.75	0.09312%	\$5,177
PSC	0.50	1.00	0.00	12.75	14.25	0.05833%	\$3,243
REV	1.50	7.00	514.50	64.00	587.00	2.40269%	\$133,581
TOTAL	148.50	474.00	17,956.00	5,852.50	24,431.00*	100.00%	\$5,559,672

* NOTE: Hearing hours scheduled by contract agencies (water management districts, regional planning councils, cities, counties, etc.) are reported separately. In FY 1993-94, these agencies scheduled a total of 1,014.25 hearing hours. Hence, the Division scheduled a total of 25,445.25 hearing hours in FY 1993-94.

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
COM	Department of Commerce
COR	Department of Corrections
DBPR	Department of Business and Professional Regulation
DBPRAHCA	Department of Business and Professional Regulation - Agency for Health Care Administration
DCA	Department of Community Affairs
DEP	Department of Environmental Protection
DLE	Department of Law Enforcement
DMS	Department of Management Services
DOE	Department of Education
SCHBDS	School Boards
DOS	Department of State
DOT	Department of Transportation
ELDER	Department of Elder Affairs
ETH	Ethics Commission
FWF	Florida 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
PSC	Public Service Commission
REV	Department of Revenue