



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

Ann Cole
Clerk

February 1, 1996

TWENTY-SECOND 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

Fiscal year 1994-95 saw a significant increase in the hours of hearings scheduled and held by the Division in comparison to the previous fiscal year. In FY 1994-95, the Division scheduled 29,817 hours of hearing in comparison to 25,445 in fiscal year 1993-94, an increase of 17.18 percent

(Appendix 1). The actual hearing hours held also increased over FY 1993-94 by an average of 14.32 percent. At the same time, the number of cases actually going to hearing decreased by 5.40 percent. This indicates that the cases that are heard are becoming increasingly more complex and require significantly more time and resources to hear and decide.

The charts attached to this report (Appendix 4) break out by agency the utilization rates of Division resources and demonstrate that in descending order the Agency for Health Care Administration, Department of Health and Rehabilitative Services, Department of Environmental Protection, Department of Business and Professional Regulation, Department of Community Affairs and Department of Insurance are the agencies that utilize close to 75 percent of the Division's docket. Additionally, the Water Management Districts have become a major user of the Division's services, although not reported on the State agency break outs since the Districts are charged an hourly rate by contract as opposed to the pro-rata division of hearing time allotted among other State agencies.

In 1995, a total of 64 Florida Birth-Related Neurological Injury Compensation Act (NICA) cases were filed, up from 46 cases filed in 1994. These cases continue to require employees to devote a significant portion of their time to processing and appeals activities because of the significant amounts of dollars involved and the inordinate amount of filing and paper generated by these cases. Additionally, the caseload

increased by 177.78 percent with 25 cases referred by nine governmental entities compared to nine cases filed by four entities the previous year. Additionally, final authority rule challenge hearing requests increased by 35.48 percent, up 77 cases from 294 filed in 1996 compared with 217 cases filed in 1995.

*A-
Replacement PB
for Ann Regt!*

UTILIZATION OF PERSONNEL

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The Division has 66 established positions comprised of the Director and Chief Judge, Deputy Chief Judge, 30 Administrative Law Judges, 3 Court Reporters, 1 Budget Director, 1 Executive Assistant, 1 Personnel Officer, 1 Division Clerk, 1 Deputy Clerk, 3 Administrative Assistants, 1 Accountant, 1 Purchasing Agent, 1 Fiscal Assistant, 1 Distributed Computer Systems Analyst, 1 Office Automation Specialist, 1 Computer Operator, 4 Staff Assistants, 11 Administrative Secretaries, and 2 Senior Clerks.

In-House Court Reporters

Since FY 1994-95 the Division has employed three full time court reporters. The goal is for these reporters to cover 100 percent of the Division's hearings in Tallahassee. DOAH reporters covered 79 percent of Tallahassee hearings in FY 1995-96, up from 53 percent in FY 1994-95. The court reporters produced a total of 34,112 pages of transcription in FY 1995-96. This data was not capturable, however, for FY 1994-95, during the program's first year as a pilot project. See Appendix 3.

In 1995 the Division held a total of 4,018 hearings, 118 less than the 4,136 hearings held in 1994.

Although the overall case load decreased in 1995, the Division's overall productivity increased as evidenced by each Hearing Officer's ability to more timely bring cases to closure. The Division closed 7,105 cases, a +2 percent increase over the 6,949 cases closed in 1994. This is an average of 197 closures per Hearing Officer, as compared to 131 closures per Hearing Officer the previous year.

OFFICE AUTOMATION

The primary systems applications for the Division are its Case Tracking System (CTS), a full text retrieval and document indexing system for all DOAH recommended and final orders (ACCESS), and word processing. Secondary applications include electronic mail and computerized legal research (Florida Statutes, Florida Administrative Code, Southern Reporter and Federal Reporter). During 1995, the Division established realtime or computer generated court reporting in two of its hearing rooms in conjunction with its in-house court reporting program.

OPERATING BUDGET

Appendix 3 summarizes the Division's actual and estimated expenditures for FY 1994-95 and FY 1995-96, respectively. In FY 1995-96, the Division is 100 percent trust

funded and receives transfers from the agencies it serves. Appendix 3 also outlines funds requested in the Division's FY 1996-97 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 1995, the Division submitted the results of its ninth annual study to the Legislature and Executive Office of the Governor (see Appendix 4). In FY 1994-95, agencies scheduled a total of 29,817 hearing hours with the Division. Of this total, the Division's Hearing Officers actually spent 7,578 hours in administrative proceedings. In FY 1994-95, 22,239 hearing hours scheduled were cancelled or continued.

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, which was upheld by the circuit court, was appealed by the Division. On April 12, 1994, the First District Court of Appeal reversed the circuit judge's order of summary judgment and remanded with directions to enter summary judgment for DOAH. The Division continues to pursue collection of past-due payments for Hearing Officer services from school districts and other educational entities.

RECOMMENDATIONS CONCERNING THE A.P.A.

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

Respectfully submitted,



SHARYN L. SMITH
Director

SLS/css

DIVISION OF ADMINISTRATIVE HEARINGS
Summary of Hearing Hours Scheduled and Held

	1987-88*	1988-89*	1989-90*	1990-91	1991-92	1992-93	1993-94	1994-95
Hearing Hours SCHEDULED by Agencies	25,069	23,883	28,022	29,419	31,056	26,006	25,445	29,817
% Inc/(Dec)	-4.73%	17.33%	4.99%	5.56%	-16.26%	-2.16%	17.18%	
Actual Hearings HOURS HELD:								
Regular	5,777	5,818	6,506	6,292	6,504	4,951	5,106	5,844
Baker Act	341	369	478	567	571	523	439	495
Total	6,118	6,187	6,984	6,859	7,075	5,474	5,545	6,339
% Inc/(Dec)	1.13%	12.88%	-1.79%	3.15%	-22.63%	1.30%	14.32%	
Actual Hearings NUMBER HELD:								
Regular	1,293	1,316	1,448	1,326	1,291	1,104	1,061	1,006
Baker Act	2,165	2,619	3,737	3,781	4,109	3,537	3,313	3,132
Total	3,458	3,935	5,185	5,107	5,400	4,641	4,374	4,138
% Inc/(Dec)	13.79%	31.77%	-1.50%	5.74%	-14.06%	-5.75%	-5.40%	

*NOTE: In FY 1987-88, 1988-89 and 1989-90, hours scheduled were reported as follows:

1987-88: 12/1/87 - 11/30/88
 1988-89: 12/1/88 - 11/30/89
 1989-90: 12/1/89 - 11/30/90

DIVISION OF ADMINISTRATIVE HEARINGS
ANALYSIS OF AGENCY REQUEST FOR
HEARING OFFICERS FOR CALENDAR YEAR 1995

AGENCY	Jan-June	Jul-Dec	TOTAL
ACME Improvement District.....	0	1	1
Department of Agriculture and Consumer Services.....	16	33	49
Produce Disputes.....	20	7	27
Citrus Disputes.....	5	1	6
Department Total.....	41	41	82
Department of Business and Professional Regulation..	2	4	6
Division of Alcoholic Beverages and Tobacco.....	73	77	150
Construction Industry Licensing Board.....	39	27	66
Board of Accountancy.....	2	0	2
Building Code Administrators and Inspectors.....	1	0	1
Division of Land Sales Condos. and Mobile Homes....	21	23	44
Division of Pari-Mutuel Wagering.....	8	6	14
Board of Professional Engineers.....	6	2	8
Florida Real Estate Appraisal Board.....	2	3	5
Florida Real Estate Commission.....	38	43	81
Board of Veterinary Medicine.....	13	7	20
Department Total.....	205	192	397
Division of Professions			
Board of Architecture.....	4	0	4
Board of Auctioneers.....	10	10	20
Barbers Board.....	3	1	4
Board of Cosmetology.....	3	2	5
Electrical Contractors Licensing Board.....	3	3	6
Board of Funeral Directors and Embalmers.....	1	3	4
Board of Land Surveyors.....	5	5	10
Board of Massage	7	10	17
Board of Pilot Commissioners.....	2	1	3
Board of Waste Water Management.....	1	0	1
Division Total.....	39	35	74
Department Grand Total.....	244	227	471
Agency for Health Care Administration.....	2	7	9
Audit Quality Control Services.....	35	9	44
Health Care Cost Containment Board.....	1	9	10
Office of Licensure and Certification.....	57	57	114
Office of Community Medical Facilities (CON cases).	125	128	253
Board of Nursing Home Administrators.....	3	2	5
Agency Total.....	223	212	435
Division of Medical Quality Assurance			
Board of Chiropractic.....	12	4	16
Clinical Social Workers.....	3	2	5
Board of Dentistry.....	5	4	9
Exemption (Home Health).....	2	2	4

Marriage and Family Therapists.....	2	1	3
Agency for Health Care Administration			
Division of Medical Quality Assurance (continued)			
Medicaid Program Integrity.....	86	79	165
Board of Medicine.....	54	36	90
Board of Mental Health Counselors.....	5	6	11
Midwifery Council.....	1	0	1
Board of Nursing.....	18	10	28
Occupational/Physical and Respiratory Therapy.....	2	3	5
Board of Opticianry	1	2	3
Board of Optometry.....	6	2	8
Board of Osteopathic Medical Examiners.....	2	3	5
Board of Pharmacy.....	4	4	8
Podiatric Medicine.....	5	0	5
Board of Psychological Examiners.....	1	9	10
Division Total.....	209	167	376
Department Grand Total.....	432	379	811
Department of Community Affairs.....	43	37	80
Florida Housing Finance Agency.....	2	0	2
Department Total.....	45	37	82
Office of Comptroller.....	1	0	1
Department of Banking and Finance.....	9	20	29
Division of Securities.....	3	8	11
Department Total.....	13	28	41
Contract Hearings			
City of Cape Coral.....	1	0	1
City of Clearwater.....	3	2	5
Clay County.....	1	0	1
County of Hillsborough.....	1	1	2
Contract Hearing Total.....	6	3	9
Department of Corrections.....	8	36	44
Mental Health Institute.....	15	16	31
Department Total.....	23	52	75
Department of Education			
Division of Blind Services.....	1	2	3
Daytona Beach Community College.....	0	1	1
School for the Deaf and Blind.....	2	3	5
Education Practices Commission.....	28	20	48
Florida A & M University.....	1	0	1
Florida State University.....	3	2	5
Miami-Dade Community College.....	2	1	3
Post-Secondary Vo-Tech/Trade and Business Schools..	2	0	2
Board of Regents.....	1	0	1
Seminole Community College.....	0	1	1
University of Florida.....	1	1	2
University of Miami.....	1	0	1
University South of Florida.....	2	0	2
University of West Florida.....	0	1	1
Non-School Board Total.....	44	32	76

School Board Cases

<Exceptional Education Cases included in totals>..	<39>	<51>	<90>
Alachua County School Board.....	0	1	1
Bay County School Board.....	1	0	1
Brevard County School Board.....	0	6	6
Broward County School Board.....	12	10	22
Citrus County School Board.....	2	0	2
Clay County School Board.....	1	0	1
Collier County School Board.....	2	1	3
Columbia County School Board.....	1	1	2
Dade County School Board.....	11	24	35
Dixie County School Board.....	1	0	1
Duval County School Board.....	2	1	3
Escambia County School Board.....	1	2	3
Flagler County School Board.....	0	5	5
Hernando County School Board.....	0	1	1
Hillsborough County School Board.....	0	3	3
Lake County School Board.....	2	1	3
Lee County School Board.....	1	0	1
Leon County School Board.....	2	2	4
Martin County School Board.....	0	1	1
Monroe County School Board.....	0	1	1
Orange County School Board.....	10	8	18
Osceola County School Board.....	2	1	3
Palm Beach County School Board.....	17	11	28
Pasco County School Board.....	1	0	1
Pinellas County School Board.....	19	6	25
Polk County School Board.....	1	0	1
Putnam County School Board.....	0	4	4
Saint Johns County School Board.....	1	0	1
Saint Lucie County School Board.....	2	3	5
Sarasota County School Board.....	2	3	5
Seminole County School Board.....	9	9	18
Suwannee County School Board.....	1	1	2
Volusia County School Board.....	0	3	3
School Board Total.....	104	109	213
Department Grand Total.....	148	141	289
Department of Environmental Protection.....	126	111	237
Marine Fisheries Commission.....	1	2	3
Department Total.....	127	113	240
Ethics Commission.....	1	4	5
Florida Game and Fresh Water Fish Commission.....	5	1	6
Florida Housing Finance Agency.....	2	0	2
Office of the Governor			
Florida Land and Water Adjudicatory Commission.....	10	6	16
Department Total.....	10	6	16

Department of Health and Rehabilitative Services

Baker Act Cases:			
Anclote Manor Hospital.....	3	4	7
Florida State Hospital.....	318	302	620
G. Pierce Wood Memorial Hospital.....	275	266	541
Northeast Florida State Hospital.....	531	347	878
South Florida State Hospital.....	219	195	414
West Florida Community Care Center.....	5	4	9
Baker Act Total.....	1351	1118	2469
Non-Baker Act Cases:			
Miscellaneous.....	3	4	7
Audit Services.....	23	0	23
Child Abuse Cases.....	319	129	448
Developmental Services Program.....	6	6	12
Emergency Medical Services.....	2	1	3
Health Program Office.....	12	12	24
Health Program Office Pharmacy.....	3	0	3
Office of Central Administrative Services.....	5	2	7
Office of Laboratory Services.....	0	1	1
Office of Personnel.....	0	2	2
Program Development for Aging and Adult Services...	1	0	1
Program Development for Children's Medical Services.	1	1	2
Program Development for Children, Youth and Families.	17	29	46
Program Development for Human Services.....	4	3	7
Program Development for Medicaid Disputes.....	1	0	1
Program Development for Mental Health.....	2	6	8
Non-Baker Act Total.....	399	196	595
Department Grand Total.....	1750	1314	3064
Department of Highway Safety and Motor Vehicles.....	17	22	39
Department of Insurance and Treasurer.....	90	93	183
Medical Arbitration.....	7	18	25
Rate/Casualty.....	1	2	3
Department Total.....	98	113	211
Jacksonville Environmental Protection Agency.....	1	0	1
Department of Juvenile Justice.....	4	6	10
Department of Labor and Employment Security.....	2	4	6
Bureau of Self Insurance.....	1	0	1
Division of Employment and Training.....	2	5	7
Division of Vocational Rehabilitation.....	9	12	21
Division of Unemployment Compensation.....	0	1	1
Division of Workers Compensation.....	10	0	10
Department Total.....	24	22	46
Department of Legal Affairs.....	1	0	1
Bureau of Criminal Justice Programs.....	10	21	31
Department Total.....	11	21	32

Department of Management Services.....	9	2	11
Convicted Vendor List.....	0	3	3
Human Relations Commission.....	39	29	68
State Employee Insurance and Retirement.....	7	12	19
Department Total.....	55	46	101
Minority Economic and Business Development.....	40	20	60
Neurological Injury Compensation Association.....	42	22	64
Orlando-Orange County Expressway Authority.....	0	2	2
Pinellas County Construction Licensing Board.....	5	6	11
Public Service Commission.....	2	3	5
Department of Revenue.....	130	73	203
State Board of Administration.....	3	1	4
Department of State			
Florida Election Commission.....	1	1	2
Division of Licensing.....	39	41	80
License Denial Cases.....	4	7	11
Department Total.....	44	49	93
Department of Transportation.....	56	45	101
Sign Disputes.....	55	1	56
Department Total.....	111	46	157
Department of Veterans' Affairs.....	1	0	1
Water Control Districts			
Flagler Estates Road and Water Control District....	1	0	1
West Coast Regional Water Control District.....	1	0	1
Total.....	2	0	2
Water Management Districts			
South Florida Water Management District.....	6	7	13
Saint Johns River Water Management District.....	5	8	13
Southwest Florida Water Management District.....	26	0	26
Total.....	37	15	52
NON-BAKER ACT TOTAL.....	2123	1696	3819
DOAH GRAND TOTAL.....	3474	2814	6288

SUMMARY

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

<u>Appropriation Category</u>	<u>Actual Expenditures FY 1994-95</u>	<u>Estimated Expenditures FY 1995-96</u>	<u>Requested FY 1996-97</u>
Salaries & Benefits	\$4,221,272	\$4,536,359	\$4,615,681
Other Personal Services	187,605	254,742	254,742
Expenses	771,685	695,215	694,657
Operating Capital Outlay	88,776	74,717	71,550
Special Categories TR/Citrus Adv. TF	41,129	41,129	41,129
Data Processing Services SAMAS User Charge	<u>0</u>	<u>4,343</u>	<u>4,343</u>
TOTAL	<u>\$5,310,467</u>	<u>\$5,606,505</u>	<u>\$5,682,102</u>
Positions	65	66	66

08/31/95

HOURS SCHEDULED BY AGENCY
 FY 1994-95 Apportionment Study - Final Report
 For the period 07/01/94 through 06/30/95

AGENCY	PREHEARING CONFERENCE	MOTION HEARING	CANCELLED/ CONTINUED HEARING	FINAL HEARING	TOTAL HOURS	% OF TOTAL HOURS	% OF 1996-97 LBR
AHCA	19.50	167.00	5,786.75	1,485.75	7,459.00	28.89937%	\$1,642,092
AGR	3.75	6.00	187.00	151.25	348.00	1.34830%	\$76,612
CMP	4.75	22.25	487.00	121.50	635.50	2.46220%	\$139,905
DBPR	7.25	44.00	1,768.00	430.25	2,249.50	8.71553%	\$495,225
DCA	9.75	12.00	1,719.00	188.50	1,929.25	7.47474%	\$424,722
COR	0.00	2.50	52.00	19.50	74.00	0.28671%	\$16,291
DOE	1.50	6.00	766.50	127.50	901.50	3.49280%	\$198,464
DEP	3.75	122.25	2,463.00	327.25	2,916.25	11.29881%	\$642,010
ETH	0.00	2.50	46.00	144.50	193.00	0.74776%	\$42,488
GOV	1.00	6.75	354.00	52.00	413.75	1.60305%	\$91,087
HRS	25.50	74.00	2,656.75	1,068.00	3,824.25	14.81679%	\$841,905
HSM	3.25	16.50	152.00	78.00	249.75	0.96764%	\$54,982
INS	11.00	34.75	1,139.50	365.25	1,550.50	6.00730%	\$341,341
LES	3.75	19.50	317.50	68.25	409.00	1.58464%	\$90,041
DLE	2.75	1.25	249.50	89.00	342.50	1.32699%	\$75,401
DLA	0.50	1.50	12.00	10.50	24.50	0.09492%	\$5,394
DMS	4.25	5.75	282.75	48.75	341.50	1.32312%	\$75,181
PSC	0.00	0.00	44.00	0.00	44.00	0.17047%	\$9,687
REV	1.25	9.50	555.50	158.25	724.50	2.80702%	\$159,498
DOS	0.50	1.00	266.00	106.00	373.50	1.44710%	\$82,226
DOT	4.50	30.00	530.00	242.00	806.50	3.12473%	\$177,550
TOTAL	108.50	585.00	19,834.75	5,282.00	25,810.25	100.00000%	\$5,682,102

NOTE: Hearing hours scheduled in contract cases (water management districts, regional planning councils, cities, counties, etc.), Human Relations Commission cases, NICA cases, school district cases, and other miscellaneous cases are reported separately. In FY 1994-95, the hearing hours scheduled in these cases totaled 4,006.75. Hence, the Division scheduled a total of 29,817 hearing hours in FY 1994-95.

08/31/95

KEY TO AGENCY TITLE ABBREVIATIONS

<u>Abbreviated Agency Title</u>	<u>Full Agency Title</u>
AHCA	Agency for Health Care Administration
AGR	Department of Agriculture & Consumer Services
CMP	Department of Banking & Finance/Comptroller
DBPR	Department of Business and Professional Regulation
DCA	Department of Community Affairs
COR	Department of Corrections
DOE	Department of Education
DEP	Department of Environmental Protection
ETH	Ethics 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
DLE	Department of Law Enforcement
DLA	Department of Legal Affairs
DMS	Department of Management Services
PSC	Public Service Commission
REV	Department of Revenue
DOS	Department of State
DOT	Department of Transportation