

Accountability Report Transmittal Form

Agency Name: Administrative Law Judge Division

Date of Submission: September 7, 2001

Agency Director: Chief Judge Marvin F. Kittrell

Agency Contact Person: H. Lee Smith, Clerk

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◆ Section I - Executive Summary

1. *Major achievements from past year.* Near the end of the previous fiscal year, the Division began receiving appeals of inmate grievances against the Department of Corrections. This new jurisdiction resulted on February 14, 2000, when the South Carolina Supreme Court issued an opinion, in the matter of Malik Abdul Al-Shabazz v. State of South Carolina. The Court fashioned a procedure whereby inmates may seek review of certain grievance decisions of the Department of Corrections by filing a Notice of Appeal with the Administrative Law Judge Division. Prior to this opinion, the Division had not heard cases involving the Department nor any other custodial institution because there is no statutory authority to do so. Thus the Al-Shabazz opinion created new jurisdiction for the Division and increased its caseload dramatically. The legislature appropriated to the Division an additional \$100,000 for FY 2000-2001 to help in processing these cases. During that year, the Division's caseload was nearly three times greater than it would have been without the inmate appeals. Notwithstanding the additional work involved with these appeals, and with only the extra \$100,000, most types of cases experienced an increasing delay between filing and disposition.
2. *Mission and values.* The Administrative Law Judge Division is an autonomous agency of the executive branch of State government, created by Act No. 181 of 1993, widely known as the "Restructuring Act." The provisions establishing the Division are contained in Article 5, Chapter 23 of Title 1 of the 1976 South Carolina Code of Laws. Its sole mission is to provide a neutral forum for fair, prompt and objective hearings for any person(s) affected by an action, or proposed action, of certain agencies of the State of South Carolina.
3. *Key strategic goals for present and future years.* The Division's business is, simply stated, the resolution of administrative law disputes, usually between an individual or business entity and a governmental agency responsible for the issuance and management of licenses or permits involving some type of regulated activity. The process must be fair and efficient, and cases disposed of within reasonable time frames.
4. *Opportunities and barriers that may affect the agency's success in fulfilling its mission and achieving its strategic goals.* In recent years, both the new and the existing workload presented to the agency have been in balance with the resources necessary to handle the work. During the past year, two events have limited the agency's ability to fulfill its mission. First, the tripling of the Division's workload due to the inmate grievance appeals has severely hampered the Division from handling the non-grievance caseload. Second, the Division curtailed spending in order to maximize funds to be carried forward into FY 2001-2002, and it also lost one percent of its appropriation due to a general fund reduction; the combined limitations on financial resources created difficulties in hearing and disposing of cases in a timely manner. Further, the Division received one of the largest budget reductions – 14.3% – for FY 2001-2002.

◆ *Section II – Business Overview – A fact-based description of the organization. List the following elements:*

1. *Number of employees.* The Division now employs 21 individuals out of 28 FTE's: 6 judges and 7 staff who are mandated by statute, and 9 additional staff including 3 staff attorney positions with one remaining vacant. See organization chart, Attachment A.
2. *Operation locations.* The Division's offices are located in the Edgar Brown Building, Columbia, SC. One judge resides near Greenville, SC and maintains an office in his home.
3. *Expenditures/appropriations chart.*

Base Budget Expenditures and Appropriations

Major Budget Categories	99-00 Actual Expenditures		00-01 Actual Expenditures		01-02 Appropriations Act	
	Total Funds	General Funds	Total Funds	General Funds	Total Funds	General Funds
Personal Service	\$1,217,378	\$1,217,378	\$1,309,039	\$1,309,039	\$1,148,181	\$1,148,181
Other Operating	\$383,836	\$383,836	\$303,538	\$303,538	\$255,020	\$255,020
Special Items	\$0	\$0	\$0	\$0	\$0	\$0
Permanent Improvements	\$0	\$0	\$0	\$0	\$0	\$0
Case Services	\$0	\$0	\$0	\$0	\$0	\$0
Distributions to Subdivisions	\$0	\$0	\$0	\$0	\$0	\$0
Fringe Benefits	\$273,127	\$273,127	\$332,056	\$332,056	\$255,515	\$255,515
Non-recurring	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$1,874,341	\$1,874,341	\$1,944,633	\$1,944,633	\$1,658,716	\$1,658,716

Other Expenditures

Sources of Funds	99-00 Actual Expenditures	00-01 Actual Expenditures
Supplemental Bills	\$0	\$0
Capital Reserve Funds	\$0	\$0
Bonds	\$0	\$0

4. *Key customers.* The Division's direct customers are the litigants who bring cases before an administrative law judge. The litigants include individuals and business entities, and their attorneys, as well as state and local governmental agencies and their attorneys.
5. *Key suppliers.* During the adjudication of administrative law disputes, the litigants – especially the attorneys – supply the judge with information, both factual and legal arguments, which assist with disposing of the case.
6. *Description of major products and services.* Every case filed with the Division results in a Final Order, which provides the outcome. The processes, which result in issuing the Final Order, are the pre-hearing activity of filing documents, sharing information, participating in scheduling conferences, motions, and pre-hearing conferences. If necessary, there will usually be a hearing, which is the opportunity for both sides of the dispute to present their case. Finally, there will be the collection of any necessary legal research necessary for the judge to write the Final Order. All of the processes comprise the single service of the Division – to handle and dispose of administrative law disputes.
7. *Organizational structure.* The Chief Judge operates as the administrative head of the agency as well as a judicial officer. The other five judges each have a law clerk or judicial research aide available to them and also share access to three staff attorneys. The remaining positions comprise the Clerk's Office, which is responsible for caseload management, governmental affairs, finance and personnel, facilities management, and information technology.

Section III – Elements of Malcolm Baldrige Award

Elements of Malcolm Baldrige Award Criteria

Category 1 – Leadership

Section 1-23-570 establishes the Chief Judge of the Division as responsible for administration of the agency. This includes budgetary matters, assignment of cases, and the duties and responsibilities of support staff. The Chief Judge sets administrative policy for the agency, and appoints the Clerk of the Division. The other five administrative law judges serve as senior leaders in the Division. The judges hear and decide cases and promulgate rules to govern the practice and procedure before the Division. The Chief Judge frequently involves the other five judges in setting administrative policy for the agency. The Clerk of the Division is the Chief Judge's primary assistant in administering the agency, and serves as the manager of the agency. The Clerk assists the Chief Judge in setting policy, assigning cases and managing the agency budget.

1. How do senior leaders set, deploy and communicate:

- a) *Short and long term direction?* Most ideas affecting agency direction are initially researched by the Chief Judge and/or the Clerk's Office at the direction of the Chief Judge. The resulting guidelines or procedures frequently will be circulated to the other five judges for comment

before implementation. The same is true for any major change of direction or strategy. Of course, changes to rules governing the internal administration and operations of the Division or rules governing practice and procedure before the Division are effected by a vote of all six judges, pursuant to Section 1-23-650.

- b) *Performance expectations?* All six judges agreed to timetables and goals for the timely disposition of assigned cases. Adjustments to the disposition goals are made every two to three years, and the changes are reviewed by the judges.
 - c) *Organizational values?* Most policies setting organizational values, such as assigning and disposing of cases efficiently, were approved by the judges during the first several years after the agency was created in 1994. Whenever a new policy is considered, or an old policy revisited, the judges are asked to review any proposal.
 - d) *Empowerment and innovation?* Most empowerment issues arise with employees who work directly for judges, or within the Clerk's Office. No actions by the judges as a group have been necessary to accomplish this.
 - e) *Organizational and employee learning?* Judges might review or endorse opportunities for institutional and/or individual learning, but usually the Chief Judge or the Clerk's Office initiates these activities. Any judge or staff member may request to attend training he or she becomes aware of. However, conservation of funds in FY 2000-2001 and budget reductions have virtually eliminated the agency's ability to pay for training.
 - f) *Ethical behavior?* As with organizational values, most policies governing employee and judicial ethics were approved by the judges during the first several years after the agency was created in 1994. The judges are also bound by the Code of Judicial Conduct. Judges and attorneys are bound by the Code of Professional Conduct. Attorneys and staff are subject to the provisions of South Carolina Appellate Court Rule 507, and rule 506, Canon 8.
2. *How do senior leaders establish and promote a focus on customers?* Customer focus is usually encouraged by each judge as it impacts on his or her assistant's dealings with litigants. In the Clerk's Office, customer needs are regularly factored into decisions affecting agency practices and procedures.
 3. *What key performance measures are regularly reviewed by your senior leaders?* The two statistical reports measuring overall caseload and the time required to dispose of cases are shared with the judges as completed. On a quarterly basis, judges are provided a report tracking the number and types of cases filed. On a weekly basis, judges are provided a list of their pending cases as a docket management tool.
 4. *How do senior leaders use organizational performance review findings and employee feedback to improve their own leadership effectiveness and the effectiveness of management throughout the organization?* There is no formal process in place for reviewing organizational and employee feedback. Informally, employees are encouraged to offer feedback to their supervisor, who then may make a suggestion to the Chief Judge or to the judges as a group.

5. *How does the organization address the current and potential impact on the public of its products, programs, services, facilities and operations, including associated risks?* Whenever the judges are considering a new policy or a significant change to an existing policy, the impact on the public, as well as on the Division itself, is given careful consideration. This usually occurs within the context of staff and judges discussions.
6. *How does senior leadership set and communicate key organizational priorities for improvement?* Suggestions for improvement often come from outside the agency, or from staff who work in the affected area. Depending on the nature of the improvement, the judges may review and offer input, or the decision may be made by the Chief Judge.
7. *How does senior leadership and the agency actively support and strengthen the community? Include how you identify and determine areas of emphasis.* The Chief Judge and the other five judges participate in a variety of activities in the legal community. This includes actively participating in the South Carolina Bar, National Association of Administrative Law Judges and the South Carolina Administrative and Regulatory Law Association, and speaking at various seminars most often related to administrative law issues.

Category 2 - Strategic Planning

The Division is a very small operation with a simple focus: promptly and fairly dispose of all cases filed with it. No formal strategic plan has been developed and implemented. Since the basic procedures for managing caseload were adopted in 1994 and 1995, only minor adjustments have occurred. Case assignments are balanced among the six judges' offices, and legal staff assists the judges in handling those cases. The Clerk's Office personnel provide all of the non-legal support functions, such as case management, financial, personnel, and facilities management. In seven years, the only significant changes which have occurred affecting the amount of workload presented to the Division are: 1) the elimination of video poker cases, and 2) the addition of the inmate grievance appeals in February, 2000. The Division's budget in recent years has been virtually level, with the exception of the budget reduction for FY 2001-2002.

1. *What is your Strategic Planning process, including participants, and how does it account for:*
 - a. *Customer needs and expectations?* Customers (representatives of litigant groups) have been represented on the initial advisory committee to draft rules of procedure for the Division, and the permanent Standing Rules Committee, which consists primarily of attorneys from across the state. The drafting of rules of procedure is the primary process for addressing litigants' needs and expectations.
 - b. *Financial, societal and other risks?* Judges are periodically advised of external events that may affect jurisdiction and/or caseload. For example, future year consequences of current budget cuts have been reviewed with the judges.
 - c. *Human resource capabilities and needs?* Similarly, shifts of personnel to accommodate changes in jurisdiction, such as the new inmate grievance jurisdiction, have occurred only after discussion of the problem with the judges.

d. Operational capabilities and needs? As with human resource needs, operational resources have been reallocated after discussion with the judges.

e. Supplies/contractor/partner capabilities and needs? Although this occurs only on a very limited basis, the use of contract court reporters in lieu of a fulltime employee, for example, was discussed with the judges.

2. *How do you develop and track action plans that address your key strategic objectives?* In consultation with the judges, time standards for disposing of each type of case have been developed. Statistics are generated annually, which track progress in meeting those time standards.
3. *How do you communicate and deploy your strategic objectives, action plans and performance measures?* Informally, the reports are shared with the judges, and any adjustments to the objectives or measures will normally be reviewed with the judges in advance. Most of the same information, as well as information about individual cases, is offered through the Division's website and also through printed reports.

Category 3 – Customer Focus

1. *Identify key customers and stakeholders.* The Division's key customers are the litigants who bring cases before an administrative law judge. The litigants include individuals and business entities, and their attorneys, as well as state and local governmental agencies and their attorneys. Ultimately, the public at large has a stake in the Division's caseload as it offers a checks-and-balances effect on the exercise of the state's regulatory authority, typically to issue licenses and permits.
2. *How do you determine who your customers are and what are their key requirements?* As cases are filed with the Division, the litigants and their attorneys are identified. Their needs and requirements have been discussed in staff meetings and in judges meetings. The Standing Rules Committee is also a conduit for receiving input from litigants.
3. *How do you keep your listening and learning methods current with changing customer/business needs?* Regular input from the Standing Rules Committee helps the Division stay current with issues best addressed by procedural rule. Input is also provided through professional associations (such as South Carolina Bar and the South Carolina Administrative and Regulatory Law Association) and the continuing legal education programs.
4. *How do you use information from customers/stakeholders to improve services or programs?* Sometimes the information may be provided in the context of an individual case that illustrates the need for amending a rule or policy. Agencies that have the greatest number of cases filed with the Division are informally encouraged to freely offer suggestions.
5. *How do you measure customer/stakeholder satisfaction?* Informal feedback is received from the agencies and from attorneys.
6. *How do you build positive relationships with customers and stakeholders? Indicate any key distinctions between different customer groups.* Receiving input from affected customers is valuable and helps insure a successful operation. Staff and judges are very intentional about cultivating professional relationships with agency heads, attorneys who practice before the Division, individuals who are not represented by attorneys and other groups such as county assessors who

have cases with the Division.

Category 4 – Information and Analysis

1. *How do you decide which operations, processes and systems to measure?* The Clerk's Office recommended two measures – the workload report and the age of disposed cases report – for use by the judges to determine success in disposing of cases promptly. These measures are two of the most commonly used statistics by states' civil courts, as reported by the National Center for State Courts.
2. *How do you ensure data quality, reliability, completeness and availability for decision-making?* The Clerk's Office is responsible for maintaining the Division's official File Book, which also serves as the database of case information used for generating reports. The data is periodically audited, on a random case basis. Also, the judges' offices receive weekly reports that are used to verify accuracy of case information.
3. *How do you use data/information analysis to provide effective support for decision-making?* The workload report is used to maintain the system of grouping case types for purposes of assigning cases to judges; the even distribution of case assignments to judges is not only fair, it is also allows for the most efficient balancing of workload to get the maximum number of cases disposed in the shortest amount of time. The age of disposed cases report is useful in identifying case types that require more time for disposition, so that different procedures might be considered to improve efficiency.
4. *How do you select and use comparative data and information?* Because there are few, if any, courts structured the same as the Division, very little relevant data exists from other jurisdictions. However, the most useful comparative data is historical, from prior year reports of the Division's workload.

Category 5 – Human Resources

1. *How do you and your managers/supervisors encourage and motivate employees (formally and/or informally) to develop and utilize their full potential?* The success of the Division relies on its employees to meet their full potential to achieve its mission and goals. By responding to the individual and professional needs of the staff through continuing education, staff training and professional development, the Division is able to accomplish its mission and achieve fulfillment of its goals. Managers recommend and encourage staff to attend pertinent training and continuing educational courses to enhance their knowledge and capabilities for job growth and excellence in performance.
2. *How do you identify and address key developmental and training needs, including job skills training, performance excellence training, diversity training, management/leadership development, new employee orientation and safety training?* New employee orientation and training is required for the varying responsibilities of the Division. The Business Office is responsible for administering employee orientation, the safety policy and training and benefit counseling. All judges and employees receive orientation, training, and counseling based on their needs, skills and abilities.
3. *How does your employee performance management system, including feedback to and from*

employees, support high performance? The Division's employee performance appraisals are used to build and maintain professionalism, knowledge, skills, and abilities of each staff member. The appraisals are used to provide feedback to staff regarding strengths and weaknesses, and suggestions for improvement. Evaluation, input, and feedback between the supervisor and employee establish a means for performance requirements that develop success criteria for each duty.

4. *What formal and/or informal assessment methods and measures do you use to determine employee well being, satisfaction, and motivation?* The performance appraisal is also used as an assessment tool to measure employee well-being and satisfaction.
5. *How do you maintain a safe and healthy work environment?* The Division follows the safety standards as set by the Office of General Services. Employees are given a safety plan in their orientation packets and are asked to stay abreast of updates and policy changes. New or changed safety policies are given to each employee as they are adopted. A monitored, secured office environment helps maintain a high standard for a safe and healthy work environment.
6. *What is the extent of your involvement in the community?* Judges and Division attorneys are encouraged to attend functions sponsored by professional organizations such as the South Carolina Bar and the South Carolina Administrative and Regulatory Law Association. Non-legal employees are active in professional organizations such as the South Carolina Information Technology Directors Association, the South Carolina Government Finance Officers Association, and the Agency Directors Organization. Judges and/or staff have participated in leadership development programs such as the South Carolina Executive Institute and leadership South Carolina. Employees are encouraged to be active in various religious and civic organizations of their choice.

Category 6 – Process Management

1. *What are your key design and delivery processes for products/services, and how do you incorporate new technology, changing customer and mission-related requirements, into these design and delivery processes and systems?* The typical life cycle for a case has three phases: the pre-hearing phase, the hearing phase, and the order-writing phase. Most of the factors influencing these three processes are dealt with by the Division's procedural rules. The drafting and review and/or amendment of these rules are nearly always handled by the Standing Rules Committee, reviewed by the judges, and submitted to the General Assembly for approval.
2. *How does your day-to-day operation of key production/delivery processes ensure meeting key performance requirements?* Each of the three phases of a case's life cycle affects the amount of time needed to dispose of a case. Judges' office staff and Clerk's Office staff are very attentive to eliminating unnecessary delay during each of the three phases.
3. *What are your key support processes, and how do you improve and update these processes to achieve better performance?* The single most important support process involves the Division's use of staff attorneys and law clerks, as well as administrative staff, to support the judges in their work with cases. During the seven years since the creation of the Division, various strategies for optimally using those positions have been considered and tested.
4. *How do you manage and support your key supplier/contractor/partner interactions and processes to*

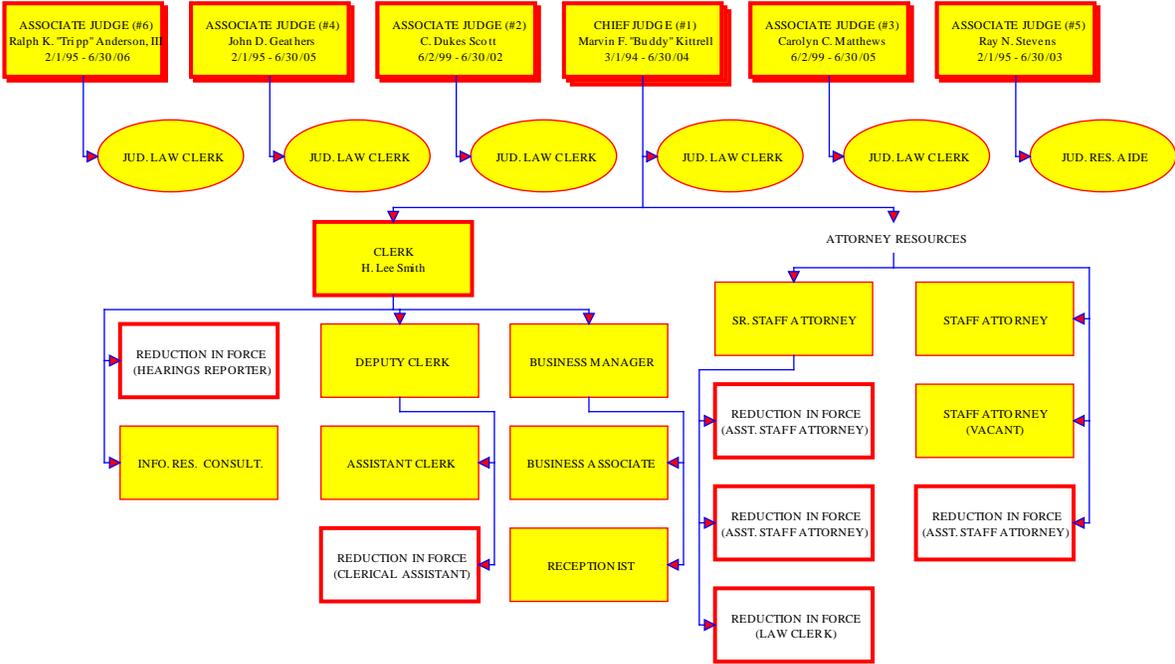
improve performance? This rarely applies except in the use of contract court reporters. Instructions and procedures have been developed to maximize the benefits derived from this arrangement.

Category 7 – Results

1. *What are your performance levels and trends for the key measures of customer satisfaction?* Since it is always to the litigants' advantage for cases to be promptly disposed, the age of disposed cases report (see Attachments B and C) is the best available measurement of attempts to satisfy customer expectations.
2. *What are your performance levels and trends for the key measures of mission accomplishment?* In addition to the age of disposed cases report, the workload report of annual filings and dispositions demonstrates previous success and current problems with attempts to dispose of cases at the same rate they are being filed with the Division. See Attachment D.
3. *What are your performance levels and trends for the key measures of employee satisfaction, involvement and development?* No specific measures have been developed. All attorneys and judges have consistently attended the minimum number of hours of continuing legal education as required by Supreme Court rule.
4. *What are your performance levels and trends for the key measures of supplier/contractor/partner performance?* No specific measures have been developed for measuring the performance of contract court reporting, which has only recently been used on a larger scale.
5. *What are your performance levels and trends for the key measures of regulatory/legal compliance and citizenship?* No specific measures have been developed.
6. *What are your current levels and trends of financial performance?* There appears to be a one to two year lag between changes in spending levels and caseload performance. The failure to receive adequate funding for inmate grievances in FY 2000-2001 slowed the Division's ability to dispose of many of the cases received during the year. Ideally, the number of cases disposed during a period will roughly equal the number of cases filed during the same period. This balance prevents a significant backlog of cases from developing. When resources to dispose of cases are inadequate, the backlog may not appear until the following year. In terms of general financial performance, the Division has consistently "lived within its means" and spent less than the total funds available. Conservative spending practices has usually enabled the Division to carry forward a portion of its budget into the following year.

ATTACHMENT A: ORGANIZATIONAL CHART

ADMINISTRATIVE LAW JUDGE DIVISION



ATTACHMENT B: AGE OF DISPOSED CASES REPORT

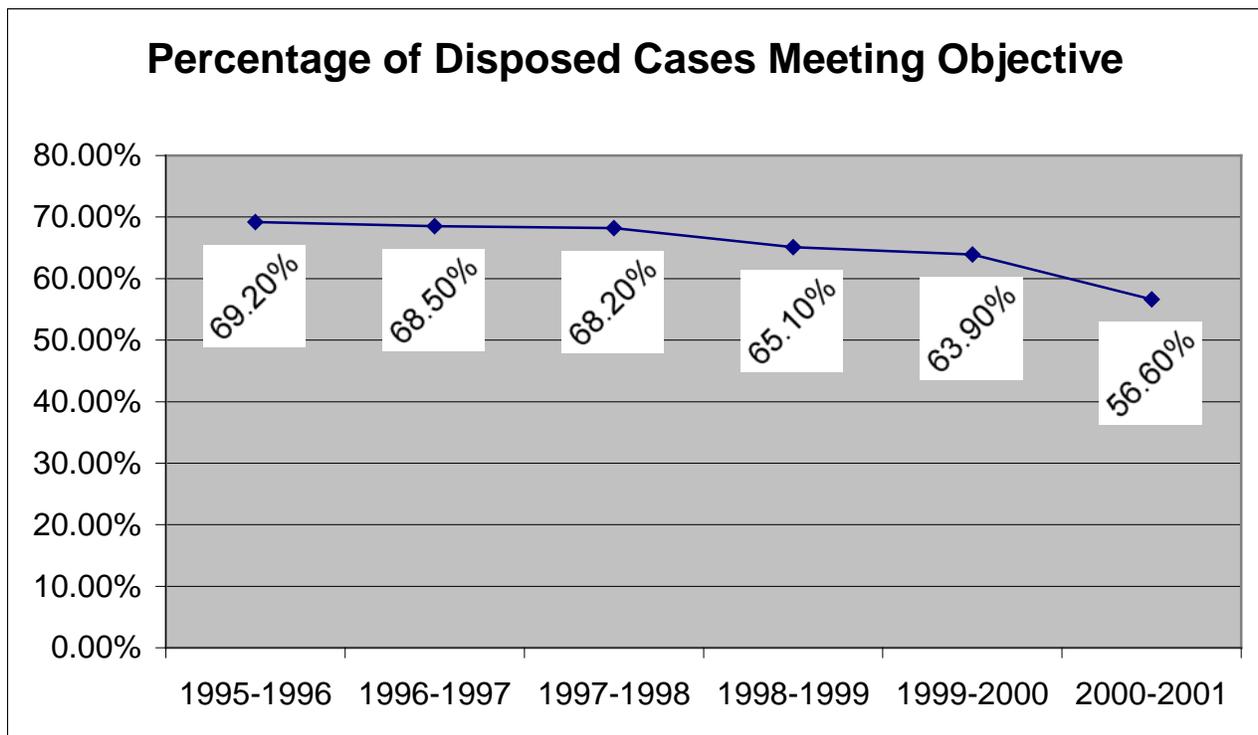
During FY 2000-01, twenty-three specific case types were tracked. The twenty-three case types are divided into four categories, based upon complexity and normal length of time to schedule hearings and prepare a final order. For the case types included in “Category I”, the objective is to dispose of most of these cases within 90 days, or to maintain an average age (between filing and disposition) of 90 days or less. In “Category II” the objective is 120 days and in “Category III” the objective is 180 days. The newest category is “Category IV” and includes inmate grievance appeals from the Department of Corrections; an objective of 90 days has tentatively been set for this category. The following table indicates for each case type and category the total number of cases disposed, the average age of those cases at the time of disposition, and the percentage of cases which were disposed within the tentative time frames. As with any adjudicatory process, there are legitimate reasons for cases to require additional time; scheduling difficulties, complicated research efforts, motions for reconsideration, and other procedural delays might prevent cases from being disposed within the desired time frames

	Total Cases Disposed	Avg. Age at Disposition	% Meeting Objective
Category I Case Types: Objective = 90 Days	261	101.2	50.6%
Insurance rate cases [DOI]	8	43.4	87.5%
Insurance agent application/disciplinary cases [DOI]	12	107.4	58.3%
Wage disputes [LLR]	3	84.0	66.7%
Alcoholic beverage license applications/renewals [DOR]	85	85.7	60.0%
Alcoholic beverage license violations [DOR]	87	130.3	29.9%
Concealable weapons permitting cases [SLED]	7	85.4	57.1%
Injunctive relief hearings	8	69.4	62.5%
Public hearings for proposed regulations	32	76.5	71.9%
Miscellaneous cases	19	121.7	36.8%
Category II Case Types: Objective = 120 Days	136	157.1	37.5%
Health licensing cases [DHEC]	29	140.8	65.5%
OCRM cases [DHEC]	89	160.5	30.3%
Appeals from professional licensing boards [LLR]	12	190.8	25.0%
Removal of children from foster care [DSS]	6	117.2	33.3%
Category III Case Types: Objective = 180 Days	268	149.6	70.1%
Certificate of need cases [DHEC]	16	225.4	50.0%
Environmental permitting cases [DHEC]	97	159.2	72.2%
Medicaid Appeals [HHS]	11	163.5	54.5%
Video games and bingo violations [DOR]	59	141.9	69.5%
State tax cases [DOR]	25	134.0	76.0%
County property tax (real and personal) cases [DOR]	56	124.8	73.2%
Appeals of day-care or foster care license revocations	4	133.8	75.0%
Category IV Case Types: Objective = 120 days	653	130.5	57.4%
Inmate grievances [DOC]	653	130.5	57.4%
ALL CASE TYPES	1,318	131.3	56.6%

NOTE: DOI: Dept. of Insurance; LLR: Dept. of Labor, Licensing and Regulation; DNR: Dept. of Natural Resources; DOR: Dept. of Revenue; DHEC: Dept. of Health and Environmental Control; HHS: Dept. of Health and Human Services; DSS: Dept. of Social Services; SLED: State Law Enforcement Division; DOC: Department of Corrections.

ATTACHMENT C: AGE OF DISPOSED CASES REPORT

During the first three years the current system for categorizing cases has been used, the percentage of total cases meeting the time standards for disposition remained relatively level at just under 70%. For two years, FY 98-99 and FY 99-00, the vacancies created by the resignation and replacement of two judges resulted in a slight dip in the percentage due to the remaining four judges shouldering more caseload for a few months in each of those two years. The inclusion of the inmate grievances in the FY 00-01 percentage demonstrates the significant overall effect on the Division's ability to dispose of a reasonable percentage of its cases in a prompt manner.



ATTACHMENT D: WORKLOAD REPORT

The table and chart below compare for each fiscal year the number of cases filed with the Division, and the number of final decisions issued.

WORKLOAD BY YEAR		
Year	Cases Filed	Final Decisions
July 1, 1994 -- June 30, 1995	720	502
July 1, 1995 -- June 30, 1996	653	754
July 1, 1996 -- June 30, 1997	622	540
July 1, 1997 -- June 30, 1998	828	812
July 1, 1998 -- June 30, 1999	666	728
July 1, 1999 -- June 30, 2000	1,130 ¹	646 ²
July 1, 2000 -- June 30, 2001	2,272 ³	1,318 ⁴

¹Total includes 424 inmate grievances from the Department of Corrections

²Total includes 12 inmate grievances from the Department of Corrections

³Total includes 1,668 inmate grievances from the Department of Corrections

⁴Total includes 653 inmate grievances from the Department of Corrections

