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Accountability report 2002-2003

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Accountability Report Transmittal Form

Agency Name: South Carolina Administrative Law Judge Division

Date of Submission: September 15, 2003

Agency Director: Chief Judge Marvin F. Kittrell

Agency Contact Person: Jana E. Shealy, Clerk

Agency Contact's Number: 734-6411

Section I - Executive Summary

Mission and Values

The Administrative Law Judge Division was created by the South Carolina General Assembly by Act No. 181 of 1993, as amended by Act No. 452 of 1994, as an autonomous quasi-judicial agency within the executive branch of state government. 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 State agencies. Previously, citizens desiring an evidentiary hearing to challenge the action of a State agency were heard by hearing officers employed by that particular agency.

The Division's jurisdiction is statutory in nature. Because the Division is an agency within the executive branch of state government, its power to hear a particular type of case from a particular agency is derived exclusively from the legislative branch of state government, the General Assembly. The Division has jurisdiction over three types of matters:

Contested cases. Administrative law judges (ALJs) preside as the fact finder in all contested cases involving departments of the executive branch of state government in which a single hearing officer was previously authorized to hear and decide such cases, with certain exemptions.

Appeals. ALJs hear appeals from final decisions of contested cases before professional and occupational licensing boards or commissions within the Department of Labor, Licensing and Regulation. The Division also has appellate jurisdiction to review certain final decisions of various other boards or departments. Also, the Division hears appeals from certain final decisions of the Department of Corrections pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) and from certain final decisions of the Department of Probation, Parole and Pardon Services, pursuant to Furtick v. S.C. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003).

Regulation hearings. ALJs preside over public hearings held during the promulgation of regulations by a department for which the governing authority is a single director. Upon the conclusion of a regulation hearing, an ALJ issues a written report including findings as to the need and reasonableness of the proposed regulation. If the report includes a finding of a lack of need or lack of

reasonableness, the report may include suggested modifications to the proposed regulation.

Under the South Carolina Administrative Procedures Act, ALJs have the power to issue those remedial writs as are necessary to give effect to the Division's jurisdiction. Further, ALJs have the power to issue injunctions and enforce subpoenas as well as the same power at chambers or in open hearing as do circuit court judges, which includes the power of contempt.

The Division's contested case hearings and other proceedings are open to the public unless confidentiality is allowed or required by law.

Key Strategic Goals

The Division's primary objective for this year is to continue decreasing the time frames between the filing of cases and their final disposition, while also ensuring that litigants are provided a fair and impartial hearing.

A strategic plan for the agency has not yet been completed. However, this process is still under way and will remain an important objective until it is finalized. In order to sufficiently develop a plan that includes the process of acquiring an appropriate case management system, funding has to be addressed as well. The Division is in the process of researching the procedures for applying and receiving grants, particularly at the federal level.

Opportunities and Barriers

The Division's base budget has been reduced by 29.55% over the past two fiscal years. Of the 28 FTE positions, 10 remain vacant and cannot be filled due to those reductions. Although the Division has improved its overall age of disposed cases, the combination of limited financial resources, minimal staff and an ever increasing caseload continue to create tremendous difficulties in hearing and disposing of cases in a timely manner. As referred to in our Mission and Values section, the Supreme Court issued the opinion in Furtick on January 13, 2003, which gives the Division jurisdiction to hear appeals from certain decisions from the Department of Probation, Parole and Pardon Services. The Division did not hear those cases prior to 2003. Also, the Division continues to receive new jurisdiction almost every session from the General Assembly. The South Carolina Retirement Claims Procedure Act was signed by the Governor on April 21, 2003 and gives the Division jurisdiction to hear contested cases from certain decisions of the retirement systems. Every year that the Division's base budget is reduced and its caseload is increased by new jurisdiction, the Division is presented with an extreme and ever-increasing burden on its minimal staff and resources. Because of the increased caseload, the lack of an appropriate case management system continues to be a barrier to the Division's ability to efficiently process and dispose of its cases in a timely fashion.

The Division's website since its inception has been maintained and hosted by The Coleman Karesh Law Library at the University of South Carolina School of Law. Unfortunately, in 2003 the Law Library's webmaster left the School of Law and was not replaced. With no IT staff (the only position was eliminated as part of a reduction in force in 2002), the Division had no ability to update and post its recent decisions on the website or update any new information regarding amendments to rules or other matters which the public and/or the Division's customers would need to be aware of.

Unfortunately the judges are still unable to travel to locations outside of Columbia to hold hearings, which is of great concern to those citizens in the further regions of the state who may find it difficult to get to Columbia for a hearing. Also, there is still no funding available for the Chief Judge, other ALJs and staff to attend various educational and judicial conferences, schools, etc. for training.

As indicated previously, despite the reductions in budget and staff, the Division has used those obstacles as an opportunity to streamline the processing of cases, which, along with the McNeil decision, has resulted in an improved age of disposition for cases from FY 01-02 to FY 02-03.

Major Achievements

In FY 02-03, the Division improved its age of disposition for inmate appeals by 34.40%. This achievement is most directly related to the use of the En Banc decision in *McNeil v. South Carolina Department of Corrections*, 00-ALJ-04-00336-AP (September 5, 2001) to dispose of cases not appropriately appealed pursuant to Al-Shabazz v. State. Also the age of disposition for all cases, excluding inmate appeals, improved by approximately 3.60% for a total improvement in disposition of all cases of 26.40%.

In response to the loss of the IT position in 2002 due to a reduction in force and the loss of the University of South Carolina School of Law Library's website services, the Division has partnered with another state agency to provide these services at no cost to the Division. The Department of Parks, Recreation and Tourism's IT support on a daily basis and for assessment of our long-term needs has been critical to the Division's ability to function.

Section II - Business Overview

Number of Employees

18 (Out of 28 FTE positions)

Operation Locations

Edgar A. Brown Building, Suite 224, 1205 Pendleton St., Columbia

Base Budget Expenditures and Appropriations

Major Budget Categories	01-02 Actual Expenditures		02-03 Actual Expenditures		03-04 Appropriations Act	
	Total Funds	General Funds	Total Funds	General Funds	Total Funds	General Funds
Personal Service	\$1,152,508	\$1,142,896	\$1,032,191	\$1,032,191	\$1,028,607	\$1,028,607
Other Operating	\$163,588	\$158,588	\$194,917	\$194,917	\$145,100	\$145,100
Special Items	\$	\$	\$	\$	\$	\$
Permanent Improvements	\$	\$	\$	\$	\$	\$
Case Services	\$	\$	\$	\$	\$	\$
Distributions to Subdivisions	\$	\$	\$	\$	\$	\$
Fringe Benefits	\$276,448	\$274,418	\$259,522	\$259,522	\$244,287	\$244,287
Non-recurring	\$	\$	\$	\$	\$	\$
Total	\$1,592,544	\$1,592,544	\$1,486,630	\$1,486,630	\$1,417,994	\$1,417,994

Other Expenditures

Sources of Funds	01-02 Actual Expenditures	02-03 Actual Expenditures
Supplemental Bills	\$0	\$0
Capital Reserve Funds	\$0	\$0
Bonds	\$0	\$0

Interim Budget Reductions

Total 01-02 Interim Budget Reduction	Total 02-03 Interim Budget Reduction
\$386,584	\$139,404

Key Customers

Litigants, protestants, attorneys, certain state agencies and local governments, the media, and other interested citizens.

Key Suppliers

The General Assembly provides the Division with its jurisdiction through existing law and the creation of new statutes. The Judicial Branch provides case law which may have precedential effect on future decisions issued by the Division. The key customers also provide factual and legal information during the process of the hearing and give input, which may be incorporated into new rules or procedures for the Division.

Description of Major Products and Services

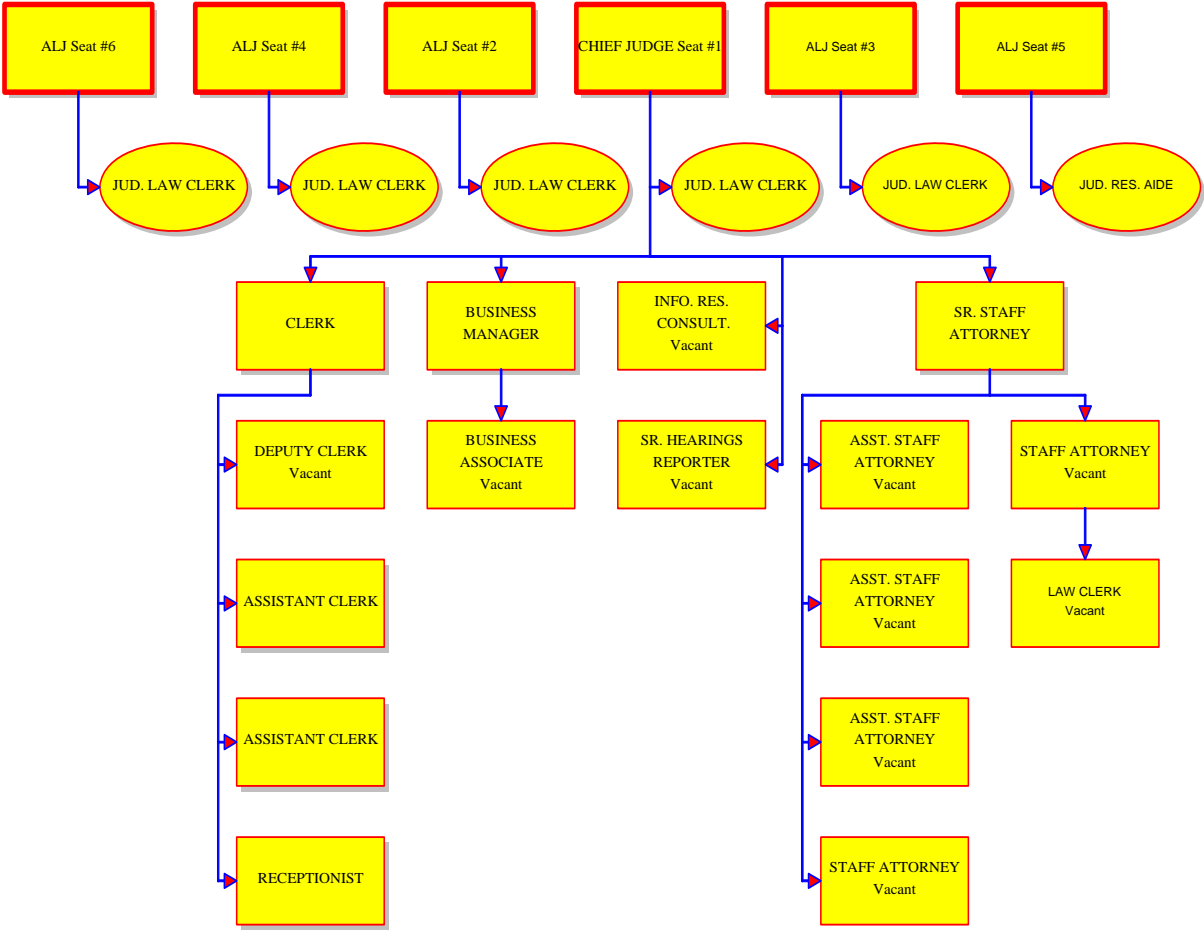
Every case filed with the Division results in a Final Order, which provides the outcome. The processes, which result in issuing the Final Order, are the pre-hearing activity of filing documents, sharing information, participating in scheduling conferences, motions, and pre-hearing conferences. Most cases proceed to a hearing, which is the opportunity for both sides of the dispute to present their case. Finally, there will be the collection of any legal research necessary for the ALJ to write the Final Order. All of the processes comprise the single service of the Division – to handle and dispose of administrative law disputes.

Organizational Structure

The Chief Judge operates as a judicial officer and the administrative head of the agency, hiring and supervising all of the administrative staff. The structure of the administrative staff has changed significantly during the past two years. Currently, the positions comprising the administrative staff are the Business Office, which is responsible for finance and personnel, facilities management and information technology; the Senior Staff Attorney for research/legal support; and the Clerk's Office, which is responsible for caseload management, contract court reporters, governmental affairs, and assistance to the Chief Judge for overall administration of the Division. The Chief Judge and the other five ALJs each have a law clerk or judicial research aide, which they hire and supervise.

ADMINISTRATIVE LAW JUDGE DIVISION

July 2003



Section III - Elements of Malcolm Baldrige Award

Category 1 - Leadership

The Chief Judge of the Division is responsible for the administration of the agency pursuant to S.C. Code Ann. § 1-23-570. This includes budgetary matters, assignment of cases and the duties and responsibilities of the administrative staff. The Chief Judge sets administrative policy for the agency, and appoints the Clerk of the Division. The other five ALJs serve as senior leaders in the Division. The Chief Judge often involves them in setting administrative policy for the agency. However, most of the ideas affecting agency direction are initiated by the Chief Judge and/or Clerk and are researched by the Clerk's Office and Senior Staff Attorney at the direction of the Chief Judge. Usually before implementation, new policies are circulated to the ALJs for comment. Changes to the Internal Rules or the Division's Rules of Procedure must be voted on by the ALJs pursuant to S.C. Code Ann. § 1-23-650. The Clerk is the Chief Judge's primary assistant in administering the policy and serves as the manager of the agency.

Timetables and goals for the timely disposition of assigned cases were initially set when the Division was first created. Periodically those timetables are reviewed by the ALJs and adjusted by the Clerk's Office at the direction of the Chief Judge. The importance of these performance expectations are tied directly to the Division's one mission which sets the agency's organizational values. The Chief Judge and the other five ALJs lead the agency in ensuring the efficient disposition of cases. Although the Chief Judge acts as the administrator of the agency, and the other ALJs serve as senior leaders, each ALJ has autonomy over the cases he or she is assigned to preside over. Therefore each ALJ's office is responsible for ensuring the fair and prompt disposition of cases.

Most empowerment issues arise with employees who work directly for ALJs, or within the Clerk's Office. No actions by the ALJs as a group have been necessary to accomplish this. ALJs 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 ALJ or staff member may request to attend training he or she becomes aware of. However, conservation of funds in FY 2001-2002 and budget reductions have eliminated the agency's ability to pay for training.

As with organizational values, most policies governing employee and judicial ethics were approved by the ALJs during the first several years after the agency was created in 1994. The ALJs are also bound by the Code of Judicial Conduct pursuant to S.C. Code Ann. § 1-23-560. ALJs 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.

Category 2 - Strategic Planning

The Division is a very small organization with a simple focus: the prompt and fair disposal of all cases filed with it. Although a formal strategic plan has not been finalized the Division is still in the process of completing a plan as indicated in the Key Strategic Goals section. 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 ALJs' offices, and legal support staff assists the ALJs in handling those cases. The administrative staff provides 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 remained virtually level during the first seven years of operation.

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. ALJs 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 ALJs. 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 ALJs. As with human resource needs, operational resources have been reallocated after discussion with the ALJs. As a result of the budget cuts, the use of contract court reporters on a regular and on-going basis in lieu of a full-time employee was discussed with the ALJs and implemented by the Chief Judge.

In consultation with the ALJs, time standards for disposing of each type of case have been developed. Statistics are generated annually, which track progress in meeting those time standards. Informally, the reports are shared with the ALJs, and any adjustments to the objectives or measures will normally be reviewed with the ALJs 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

The Division's key customers are the litigants who bring cases before an ALJ. 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.

As cases are filed with the Division, the litigants and their attorneys are identified. The needs and requirements of the customers have been discussed in staff meetings, ALJ

meetings and with the Standing Rules Committee. Most often, the input from the customers is translated into a new rule or amendment to an existing rule or procedure.

Regular input from the Standing Rules Committee helps the Division meet customer needs and concerns by refining its procedural rules. 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. Sometimes the information may be provided in the context of an individual case that illustrates the need for amending a rule or policy. Informal feedback is encouraged and received from agencies and attorneys.

Receiving input from affected customers is valuable and helps insure a successful operation. This is typically accomplished by receiving and discussing informal feedback from the litigants. ALJs and staff are very intentional about creating and maintaining 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. A particular distinction among the customers are those that are represented by attorneys and those that represent themselves, referred to as pro se litigants. The Division is very aware of the needs of those who are unrepresented and ALJD Rule 10 addresses those needs.

Category 4 - Information and Analysis

The Clerk's Office recommends two measures – the workload report and the age of disposed cases report – for use by the ALJs 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.

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 ALJs' offices receive weekly reports on pending cases that are used to verify accuracy of case information.

The workload report is used to maintain the system of grouping case types for purposes of assigning cases to the ALJs; the even distribution of case assignments by the Chief Judge to the ALJs is not only fair, it 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.

Because there are few courts, if any, structured the same as the Division, very little relevant data exists from other jurisdictions. The most useful comparative data is historical, from prior year reports of the Division's workload. However, the Division does review relative information from other states that have a central panel, or office of administrative hearings, similar to the Division.

Category 5 - Human Resources

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. However, as in FY 01-02, the Division did not have the fiscal resources to provide any training or continuing education in FY 02-03.

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 ALJs and employees receive orientation, training, and counseling based on their needs, skills and abilities.

The Division's employee performance appraisals are used to build and maintain professionalism, knowledge, skills, and abilities of the staff. The appraisals are used to provide feedback 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. The performance appraisal is also used as an assessment tool to measure employee well-being and satisfaction.

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.

ALJs 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 South Carolina Administrative and Regulatory Law Association. ALJs and/or staff have participated in leadership development programs such as the South Carolina Executive Institute and the Certified Public Managers Program. Employees are encouraged to be active in various religious and civic organizations of their choice and many participate in the United Way campaign for state government.

Category 6 - Process Management

The typical life cycle for a case has four phases: the initial filing and processing phase, the pre-hearing phase, the hearing phase, and the order-writing phase. Most of the factors influencing these four 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 ALJs, and submitted to the General Assembly for approval.

Each of the four phases of a case's life cycle affects the amount of time needed to dispose of a case. ALJs' staff and Clerk's Office staff are very attentive to eliminating unnecessary delay during each of the four phases.

The single most important support process involves the Division's use of its staff and legal resources. The Senior Staff Attorney and Clerk's Office provide a valuable support process in providing an historical perspective on current procedural issues faced by the Division. Periodically, various strategies for optimally using the staff attorney(s) and the law clerk positions have been considered and tested. From time to time legal research software has been updated to take advantage of new technology. Currently the Division uses LawDesk from West and Westlaw online to achieve optimal efficiency in issuing orders.

To improve performance for contractor interactions, the Division has developed instructions for the use of contract reporters for hearings. These procedures have been developed to maximize the benefits derived from this arrangement. Also, the Clerk's Office is in constant contact with the contract reporters and their office to monitor their needs in order to maximize their performance.

Category 7 - Results

In response to our mission and because it is always to the litigants' advantage for cases to be promptly disposed, the age of disposed cases report is the best available measurement of attempts to satisfy customer expectations.

AGE OF DISPOSED CASES REPORT

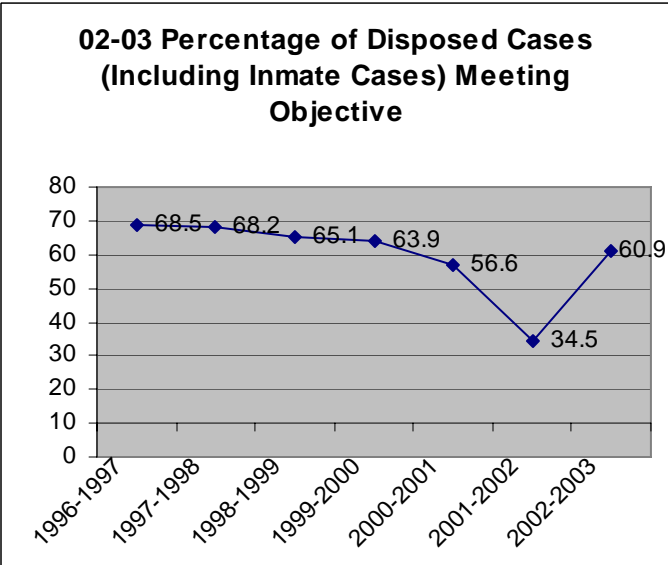
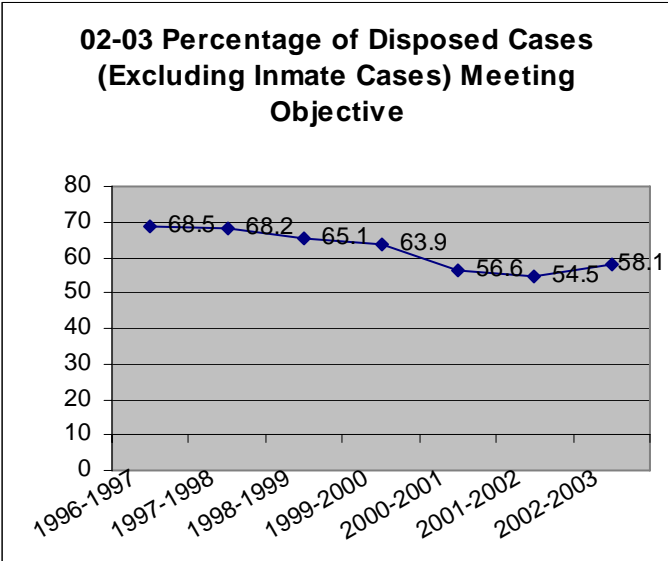
During FY 2002-03, twenty-three specific case types were tracked. The twenty-three case types are divided into four categories, based upon complexity and normal length of time between the filing of a case to final disposition. For the case types included in "Category I", the objective is to dispose of 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 "Category IV" includes only inmate grievance appeals from the Department of Corrections and the objective is 120 days. 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

suggested time frames. As with any adjudicatory process, there are legitimate reasons for cases to require additional time; requests for continuances, lengthy discovery, complicated research efforts, motions for reconsideration, and other procedural issues might prevent cases from being disposed within the desired time frames. No decisions were issued in FY 02-03 involving bingo violations from the Department of Revenue.

	Total Cases Disposed	Avg. Age at Disposition	% Meeting Objective
Category I Case Types: Objective = 90 Days	262	93.5	55.7
Insurance rate cases [DOI]	6	74.8	66.6
Insurance agent application/disciplinary cases [DOI]	6	177.0	16.6
Wage disputes [LLR]	5	108.4	60.0
Alcoholic beverage license applications/renewals [DOR]	122	82.2	57.4
Alcoholic beverage license violations [DOR]	64	112.0	50.0
Concealable weapons permitting cases [SLED]	6	149.3	33.3
Injunctive relief hearings	22	77.8	72.7
Public hearings for proposed regulations	22	73.2	81.8
Miscellaneous cases	5	94.8	60.0
Category II Case Types: Objective = 120 Days	68	164.1	40.6
Hunting/Fishing and Coastal Fisheries violations [DNR]	4	139.0	50.0
Health licensing cases [DHEC]	22	121.5	50.0
Outdoor advertising permits [DOT]	10	164.2	40.0
Disadvantaged Business Enterprises/Displacement[DOT]	14	151.9	40.0
Appeals from professional licensing boards [LLR]	22	214.9	31.8
Category III Case Types: Objective = 180 Days	228	198.4	59.6
Certificate of need cases [DHEC]	29	254.8	34.5
Environmental permitting cases [DHEC]	83	226.2	63.9
OCRM cases [DHEC]	45	185.2	51.1
Medicaid Appeals [HHS]	13	113.8	84.6
Bingo violations [DOR]	0	0	0
State tax cases [DOR]	6	133.0	83.3
County property tax (real and personal) cases [DOR]	48	165.8	64.6
Appeals of day-care or foster care license revocations	4	128	75.0
Category IV Case Types: Objective = 120 days	1058	178.3	62.6
Inmate grievances [DOC & PPS]	1058	178.3	62.5
ALL CASE TYPES	1616	166.8	60.9

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; PPS, Department of Probation, Parole and Pardon Services.

During the first three years the current system for categorizing cases was 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 ALJs resulted in a slight dip in the percentage due to the remaining four ALJs 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 and the budget and staff reductions in FY 01-02 percentage demonstrates a very significant overall effect on the Division's ability to dispose of a reasonable percentage of its cases in a prompt manner. The two charts below compare the difference in percentage of disposed cases including and then excluding the inmate cases for FY 01-02 and FY 02-03. As indicated in last year's report, it appears that the McNeil decision has had a positive impact on the timely disposition for cases disposed in FY 02-03.



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 SINCE 1997

FISCAL YEAR	*CCs, RHs, IJs, and & other appeals	<u>Al-Shabazz/ Furtick</u> Appeals	TOTAL CASES FILED	*CCs, RHs, IJs, and & other appeals	<u>Al-Shabazz/ Furtick</u> Appeals	TOTAL FINAL DECISIONS
FY 97-98	--	--	828	--	--	812
FY 98-99	--	--	666	--	--	728
FY 99-00	706	424	1,130	634	12	646
FY 00-01	604	1,668	2,272	665	653	1,318
FY 01-02	572	1,139	1,711	602	1,863	2,465
FY 02-03**	569	1,114	1,683	558	1,058	1,616

*CC - Contested Cases, RH – Regulation Hearings, IJ - Injunctions

**FY 02-03 is the first year cases from the Furtick opinion have been filed with the Division

