

Accountability Report Transmittal Form

Agency Name: South Carolina Administrative Law Court¹

Date of Submission: September 15, 2004

Agency Director: Chief Judge Marvin F. Kittrell

Agency Contact Person: Jana E. Shealy, Clerk

Agency Contact's Number: 734-6411

¹ Act No. 202 of 2004 changed the name of the Administrative Law Judge Division to the "Administrative Law Court."

Section I - Executive Summary

Mission and Values

The Administrative Law Court 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 Court 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 or departments. 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 Court's jurisdiction is statutory in nature. Because the Court 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 Court has jurisdiction over three types of matters:

Contested cases. Administrative law judges (ALJs) preside as the fact finder in all contested cases involving agencies and 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 Court also has appellate jurisdiction to review certain final decisions of various other boards or departments. Also, the Court 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 an agency or 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 Court'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 Court's contested case hearings and other proceedings are open to the public unless confidentiality is allowed or required by law.

Key Strategic Goals

- *Improve the age of disposed cases
- *Provide fair, prompt and impartial hearings for all litigants
- *Enhance information and services provided to customers on the Court's website
- *Update and improve information technology, including the creation of a case management system

Opportunities and Barriers

Opportunities

- *Continued partnership with PRT for IT support
- *Amended Rules of Procedure by creating a schedule of fees which allows the Court to generate more needed revenue

Barriers

- *Budget cuts have severely restricted access to legal resources, travel and training for judges and staff
- *No case management system
- *Employee concerns regarding possible future budget reductions
- *No formal strategic plan or needs assessment in place
- *Less than desired percentage of cases being disposed of in a timely manner

Major Achievements

*At the beginning of FY 03-04, no new decisions had been posted on the website since December 2002 due to the loss of the Court's IT position and the vacancy of the USC School of Law's webmaster. During FY 03-04, the Court was able to update the website and post all of the decisions that had been issued since mid-December 2002 and continues to update decisions monthly.

*Act No. 202 of 2004 changed the name of the Administrative Law Judge Division to the "Administrative Law Court." The name change was the result of an effort to have a name that more accurately reflects the way the Court operates. Often times, when litigants saw the word "Division" in our name, they would get the impression that we were a part of another agency, perhaps one with which they were in a dispute. The Court believes this is an important achievement to ensure litigants understand they will be given a fair hearing, decided by an impartial judge.

Accountability Report

Information from the Report is used throughout the year by the Court to review and assess the areas regarding the delivery of its service that may need improvement.

Section II - Business Overview

Number of Employees

18 (64% of the allotted 28 FTE positions)

Operation Locations

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

Base Budget Expenditures and Appropriations

Major Budget Categories	02-03 Actual Expenditures		03-04 Actual Expenditures		04-05 Appropriations Act	
	Total Funds	General Funds	Total Funds	General Funds	Total Funds	General Funds
Personal Service	\$1,032,191	\$1,032,191	\$1,013,365	\$1,013,365	\$1,064,604	\$1,064,604
Other Operating	\$194,917	\$194,917	\$179,071	\$179,071	\$128,719	\$128,719
Special Items	\$	\$	\$	\$	\$	\$
Permanent Improvements	\$	\$	\$	\$	\$	\$
Case Services	\$	\$	\$	\$	\$	\$
Distributions to Subdivisions	\$	\$	\$	\$	\$	\$
Fringe Benefits	\$259,522	\$259,522	\$269,096	\$269,096	\$247,548	\$247,548
Non-recurring	\$	\$	\$	\$	\$	\$
Total	\$1,486,630	\$1,486,630	\$1,461,532	\$1,461,532	\$1,440,871	\$1,440,871

Other Expenditures

Sources of Funds	02-03 Actual Expenditures	03-04 Actual Expenditures
Supplemental Bills	\$	\$
Capital Reserve Funds	\$	\$
Bonds	\$	\$

Interim Budget Reductions

Total 02-03 Interim Budget Reduction	Total 03-04 Interim Budget Reduction
\$139,404	\$86,779

Major Program Areas Chart

Major Program Areas

Program Number and Title	Major Program Area Purpose (Brief)	FY 02-03 Budget Expenditures	FY 03-04 Budget Expenditures
01000000 Admin	Process, hear, and decide contested cases, appeals, regulation and injunctive relief matters from state agencies pursuant to Article 1, Sect. 22 of the SC Constitution, S.C. Code Ann 1-23-500 et seq., <u>Al-Shabazz v. State</u> and various agency specific statutes.	State: 1,486,630.34 Federal: Other: Total: 1,486,630.34 % of Total Budget: 100%	State: 1,461,532.29 Federal: Other: Total: 1,461,532.29 % of Total Budget: 100%

Key Customers and Stakeholders

Litigants (including those who are the license or permit holders and those individuals that may protest the licenses and permits), attorneys, certain state agencies and local governments, the media, and other interested citizens are the Court’s key customers. Those persons are also considered stakeholders, along with the Governor, members of the General Assembly and any citizen or taxpayer of the state that has the potential to become involved in a proceeding before the Court.

Key Suppliers

The General Assembly provides the Court with its jurisdiction through existing law and the creation of new statutes. The Judicial Branch provides case law, which may have precedential value on future decisions issued by the Court. Key customers 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 Court.

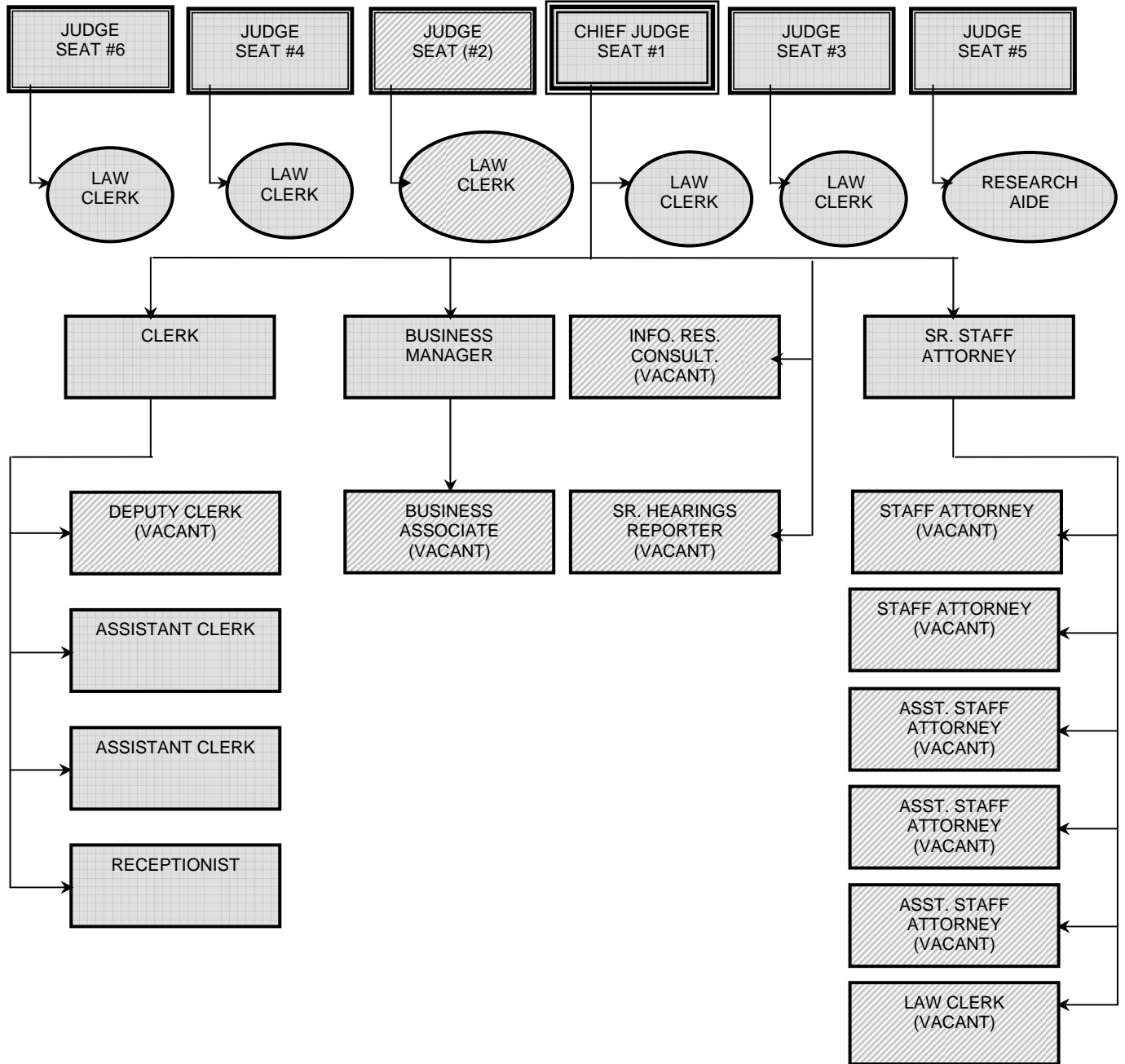
Description of Major Products and Services

A Final Order is issued in every case filed with the Court. The order provides a final resolution to all issues in the case. The processes which result in the issuance of the Final Order include the pre-hearing activity of filing documents, sharing information, participating in scheduling conferences, addressing motions, and conducting 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 Court – 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 Court. The Chief Judge and the other five ALJs each have a law clerk or judicial research aide, which each hires and supervises.

**South Carolina Administrative Law Court
June 2004**



Section III - Elements of Malcolm Baldrige Award

Category 1 - Leadership

The Chief Judge of the Court 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 Court. The other five ALJs serve as senior leaders in the Court. 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, new policies are circulated to the ALJs for comment before they are implemented. The Chief Judge is ultimately responsible for the fiscal and administrative accountability of the Court. Changes to the Internal Rules or the Court'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 Court was first created. Periodically these timetables are reviewed by the ALJs, Chief Judge and Clerk and adjusted by the Clerk at the direction of the Chief Judge. The importance of these performance expectations is tied directly to the Court's one mission, which sets the agency's organizational values. The Chief Judge and the other ALJs are responsible for ensuring the efficient disposition of cases assigned to each. 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 and his or her assistant are responsible for ensuring the fair and prompt disposition of the cases assigned to their office.

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 of which he or she becomes aware. However, conservation of funds and budget reductions has eliminated the agency's ability to pay for training for ALJs and staff.

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 Court is a very small organization that basically has seven different offices: the six judges' offices and the administrative staff. Our one program is the prompt and fair disposal of all cases filed with the Court. Therefore, it is difficult to develop a long-term formal strategic plan. However, the Court has informal plans for achieving certain goals, particularly in regard to improvement of information technology. Other plans are being discussed to develop a strategy to improve the age of disposed cases in order to enhance our main goal of providing fair, prompt and impartial hearings for all litigants.

Procedures for managing caseload have had only minor adjustments since 1994 and 1995. Case assignments are balanced among the ALJs and legal support staff assists the ALJs in handling their 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 Court are: 1) the elimination of video poker cases, and 2) the addition of the inmate grievance appeals in February, 2000. The Court'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 created to draft proposed rules of procedure for the Court, 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 in 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 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, contract court reporters are used on a regular and on-going basis in lieu of full-time employees. This 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. The reports are shared informally with the ALJs, and any adjustments to the objectives or measures will normally be provided to the ALJs for review prior to implementation. Most of the same information, as well as information about individual cases, is offered through the Court's website and also through printed reports.

Strategic Planning

Program Number and Title	Supported Agency Strategic Planning Goal/Objective	Related FY 03-04 Key Agency Action Plan/Initiative(s)	Key Cross References for Performance Measures*
01000000 Admin.	Improvement of information technology	In progress	NA
01000000 Admin.	Improvement of age of disposed cases	In progress	Age of Disposed Cases Report

Category 3 - Customer Focus

The Court'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 Court'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 Court, 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 assists the Court in refining its procedural rules and in meeting its customers needs and concerns. Input is also provided from professional associations such as the South Carolina Bar, the South Carolina Administrative and Regulatory Law Association, the South Carolina Association of Certified Public Accountants, as well as continuing legal education programs. Sometimes the information may be provided in the context of an individual case that illustrates a need for amending a rule or policy. Informal feedback is encouraged and received from agencies, departments and attorneys.

Receiving input from affected customers is valuable and helps insure a successful operation. Typically, this is done by receiving and discussing informal feedback from the litigants. ALJs and staff develop professional relationships with agency heads, attorneys who practice before the Court, individuals who are not represented by attorneys and other groups such as county assessors who have appeared in cases before the Court. One particular distinction among the customers is that some are represented by attorneys and others represent themselves (referred to as pro se litigants). The Court is very aware of the needs of those who are unrepresented and ALC 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 Court's official File Book, which also serves as the database of case information, and is used to generate reports. The data is audited on a random, but periodic 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, but it also allows for the most efficient balancing of workload to get the maximum number of cases disposed of in the shortest amount of time. The age of disposed cases report is also useful in identifying case types that require more time for disposition so that different procedures might be considered to improve efficiency.

In addition to the two key performance measures, the Court maintains an in-house electronic directory of all decisions issued by the Court. This database provides the best method of collection and maintenance of organizational knowledge. Although most cases have their own individual facts, the

judges and staff can share research and knowledge by reviewing previously issued decisions with similar legal questions.

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

Category 5 - Human Resources

The success of the Court in achieving its mission and goals relies on its employees meeting their full potential. By responding to the individual and professional needs of the staff through continuing education, staff training and professional development, the Court 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 FY02-03, the Court did not have the fiscal resources to provide any training or continuing education in FY03-04.

New employee orientation and training is required for the varying responsibilities of the Court. 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.

In the past, the Court utilized formal performance appraisals to build and maintain professionalism, knowledge, skills, and abilities of the staff. However, with the further reduction of staff and the resulting restructuring of the Court's organizational structure, a more informal approach has been implemented. Other than the judges, there is only one other supervisory position in the Court. The Clerk and each judge have daily one on one contact with the person(s) they supervise and each provides 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 Court 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 the Court's 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.

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 Court's procedural rules. The drafting and review and/or amendment of these rules are usually drafted and recommended by the Standing Rules Committee, reviewed by the ALJs, and then 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 work diligently to minimize any unnecessary delay during each of the four phases.

The single most important support process involves the use of the Court's staff and legal resources. The Senior Staff Attorney and Clerk's Office provide a valuable support process in providing a historical perspective on current procedural issues faced by the Court. 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. However, the Court's ability to update this information has been severely hampered by the cumulative budget reductions over the past few years. Currently, the Court uses LawDesk from West and Westlaw online to achieve optimal efficiency in issuing orders.

To improve performance for contractor interactions, the Court 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 of, the age of disposed cases report is the best available measurement of attempts to satisfy customer expectations.

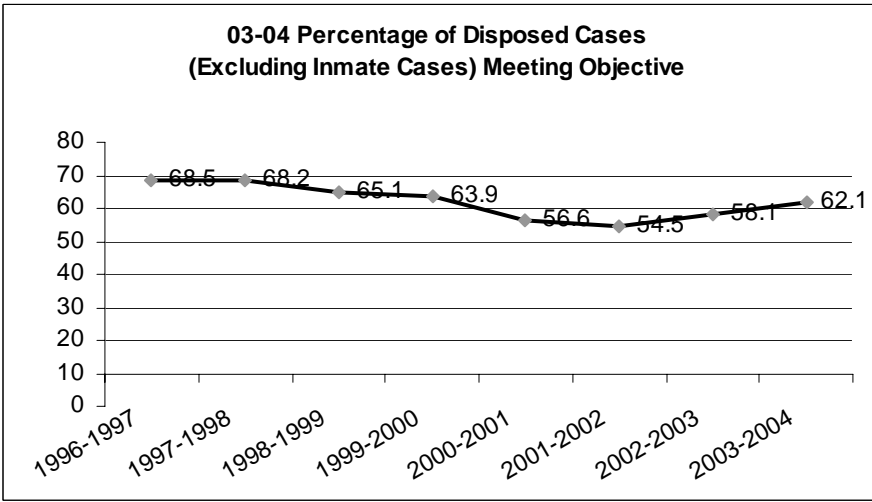
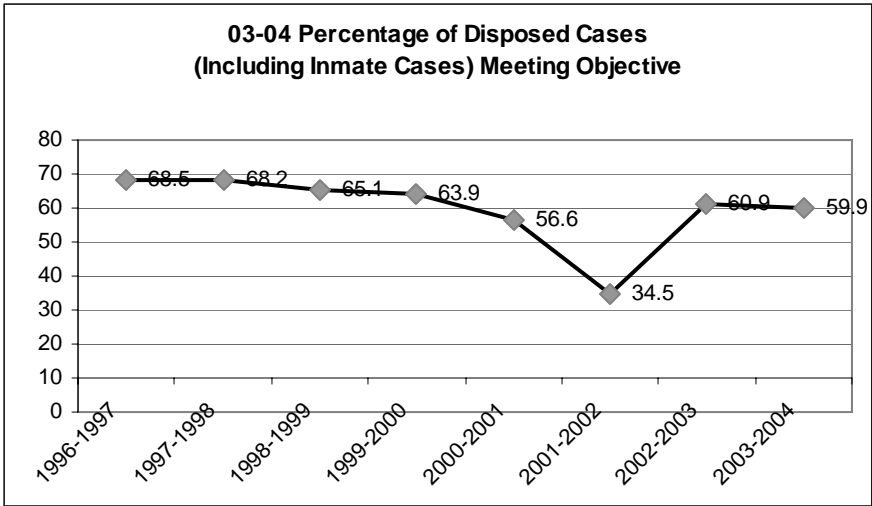
AGE OF DISPOSED CASES REPORT

During FY 2003-04, 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. "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 for processing them to conclusion within the desired time frames: requests for continuances, lengthy discovery, complicated research efforts, motions, and other jurisdictional or procedural issues which might arise during the life of the case.

	Total Cases Disposed	Avg. Age at Disposition	% Meeting Objective
Category I Case Types: Objective = 90 Days	237	93.8	65.4
Insurance rate cases [DOI]	2	143.0	50.0
Insurance agent application/disciplinary cases [DOI]	8	101.0	38.0
Wage disputes [LLR]	5	103.2	51.6
Alcoholic beverage license applications/renewals [DOR]	93	68.9	77.4
Alcoholic beverage license violations [DOR]	62	124.8	48.4
Concealable weapons permitting cases [SLED]	7	159.9	42.9
Injunctive relief hearings	14	83.5	78.6
Public hearings for proposed regulations	22	62.0	100
Miscellaneous cases	24	117.8	45.8
Category II Case Types: Objective = 120 Days	50	153.5	50.0
Hunting/Fishing and Coastal Fisheries violations [DNR]	0	Na	Na
Health licensing cases [DHEC]	23	149.4	56.8
Outdoor advertising permits [DOT]	1	648.0	0
Disadvantaged Business Enterprises/Displacement[DOT]	12	128.8	50
Appeals from professional licensing boards [LLR]	14	146.1	42.9
Category III Case Types: Objective = 180 Days	194	187.1	61.8
Certificate of need cases [DHEC]	15	207.3	66.6
Environmental permitting cases [DHEC]	64	179.7	62.5
OCRM cases [DHEC]	26	234.7	53.8
Medicaid Appeals [HHS]	6	86.7	83.3
Bingo violations [DOR]	9	189.7	44.4
State tax cases [DOR]	20	186.6	75.0
County property tax (real and personal) cases [DOR]	49	176.7	59.2
Appeals of day-care or foster care license revocations	5	194.0	40.0
Category IV Case Types: Objective = 120 days	860	211.8	58.6
Inmate grievances [DOC & PPS]	860	211.8	58.6
ALL CASE TYPES	1341	185.1	59.9

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 Court; DOC: Department of Corrections; PPS, Department of Probation, Parole and Pardon Services.

The Court's percentage of total cases meeting the time standards for disposition remained relatively level at just under 70% in the first several years of operation. During FY 98-99 and FY 99-00 there was a slight dip in the percentage of cases timely disposed of due to the resignation of two ALJs. A further decrease is shown for FY 00-01 and FY 01-02 as a result of the inclusion of the inmate grievances as well as budget and staff reductions. The two charts below compare the percentage of cases meeting the time standard for disposition from year to year. The first chart includes all inmate filings, but excludes them in the second chart. The Supreme Court's opinion in Sullivan, which modified the ALC's McNeil decision, has continued to have a positive impact on the timely disposition of inmate cases.



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

WORKLOAD BY YEAR SINCE 1997

FISCAL YEAR	FILINGS			FINAL DECISIONS		
	*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
FY 03-04	477	836	1,313	481	860	1,341

*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 Court

