

Senate Judiciary Oversight Subcommittee

Summary Report on the

SC Administrative Law Court

February 2016



The SC Administrative Law Court, which is made up of six administrative law judges who are elected by the General Assembly, is a neutral forum for hearings for any person(s) affected by an action or proposed action of certain state agencies or departments. It is also responsible for the Office of Motor Vehicle Hearings (OMVH). In FY 14-15, the court had a budget of \$3.5 million and spent about \$3.25 million with 44 authorized FTEs. There were 8,411 cases filed, 80% with OMVH. To better monitor the performance of the court, it should include all documents in its case management system and track performance measures on the fairness and objectivity of hearings. The assignment of cases to judges should be evaluated to address disparities or caseload changes.

Agency at a Glance

The Administrative Law Court's stated mission is to "provide a neutral forum for fair, prompt and objective hearings for any person affected by an action or proposed action of certain agencies of the State of South Carolina." The court, which is made up of six administrative law judges who are elected by the General Assembly, is a statutorily-created quasi-judicial agency within the executive branch of government. Its mission is accomplished by hearing contested cases, appeals, regulation hearings, and requests for injunctive relief as well as operating the Office of Motor Vehicle Hearings (OMVH). There were 8,411 cases filed in FY 14-15, 80% with OMVH. The ALC had a budget of \$3.5 million and spent \$3.25 million with 44 authorized FTEs.

Issues

CASE MANAGEMENT SYSTEM

The case management system provides limited information about the progress of cases and is not a useful tool for measuring accurately the progress or timeliness of cases.

- **Agency Recommendation:** The Administrative Law Court should include all of the documents associated with a case in its case management system.

PERFORMANCE MEASURES

To measure whether it is meeting its mission of fair, prompt, and objective hearings, the court uses two performance measures: the age of disposed cases and the workload. Neither of these measures the fairness or objectivity of the hearings. Some measures could include the percentage of cases appealed by type and the number of decisions overturned.

- **Agency Recommendations:** The Administrative Law Court should develop performance measures to evaluate the fairness and objectivity of its hearings. These measures along with the promptness measures should be analyzed to improve the operations of the court.

CASE ASSIGNMENTS

We found that the cases were assigned in accordance with the court's process and the distribution of cases among the judges varied by type of case.

- **Agency Recommendation:** The Administrative Law Court should evaluate the case groupings for assignments to judges when disparities are noted among the assignments or caseloads change.

Senate Judiciary
Oversight Subcommittee

Report on the Administrative Law Court

February 2016



Members of Subcommittee:

Senator George E. "Chip" Campsen, III, Chair
Senator Gerald Malloy
Senator Creighton B. Coleman
Senator Greg Hembree
Senator Paul Thurmond

The SC Administrative Law Court, which is made up of six administrative law judges who are elected by the General Assembly, is a neutral forum for hearings for any person(s) affected by an action or proposed action of certain state agencies or departments. It is also responsible for the Office of Motor Vehicle Hearings (OMVH). In FY 14-15, the court had a budget of \$3.5 million and spent \$3.25 million with 44 authorized FTEs. There were 8,411 cases filed, 80% with OMVH. To better monitor the performance of the court, it should include all documents in its case management system and track performance measures on the fairness and objectivity of hearings. The assignment of cases to judges should be evaluated to address disparities or caseload changes.

I. Agency at a Glance

A. Mission

The Administrative Law Court’s stated mission is to “provide a neutral forum for fair, prompt and objective hearings for any person affected by an action or proposed action of certain agencies of the State of South Carolina.” Pursuant to the Administrative Procedures Act, the court has jurisdiction to accomplish this mission by hearing contested cases, appeals, regulation hearings, and requests for injunctive relief. The court is also responsible for the Office of Motor Vehicle Hearings.

B. Governing Authority & Current Judges

The South Carolina Administrative Law Court is a statutorily-created quasi-judicial agency within the executive branch of government. The court is made up of six administrative law judges who are elected by the General Assembly, in joint session, for a term of five years and until their successors are elected and qualify (S.C. Code Ann. § 1-23-510). Even though the Administrative Law Court is an executive agency, all Administrative Law Judge candidates must go through the Judicial Merit Selection Commission process and are subject to the Code of Judicial Conduct. Judge Lenski was re-elected to another term in 2016.

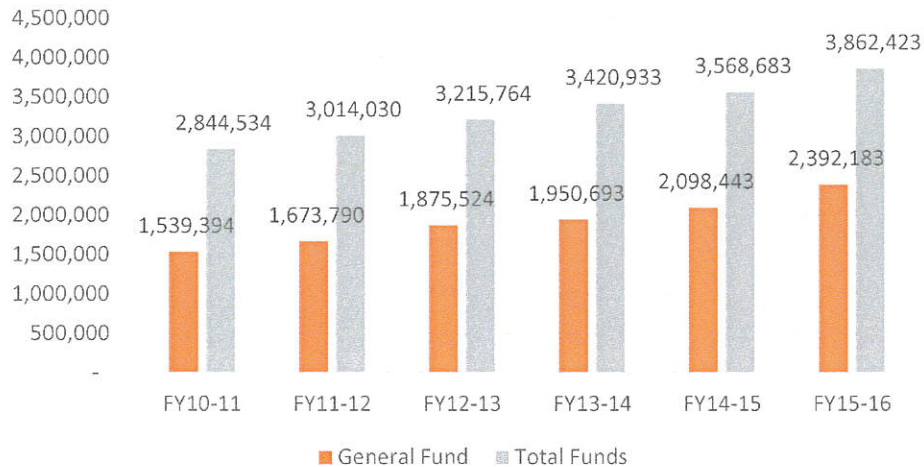
| Judge | Seat | Current Appointment Term |
|---|-------------|---------------------------------|
| Ralph K. “Tripp” Anderson, III Chief Judge | 1 | 2014 - 2019 |
| John D. McLeod | 2 | 2012 - 2017 |
| H.W. Funderburk, Jr. | 3 | 2015 - 2020 |
| Deborah Brooks Durden | 4 | 2015 - 2020 |
| Shirley Canty Robinson | 5 | 2013 - 2018 |
| Sebastien Phillip (“Phil”) Lenski | 6 | 2016 - 2021 |

C. Finances: State Appropriations and Expenditures

State Appropriations

Over the past five fiscal years, the Administrative Law Court has seen a steady increase in state appropriations averaging 9%. The largest single year increase was in FY 15-16 in which the agency received a recurring general fund increase of 14%.

Appropriation History



In FY 15-16, the agency received an increase in recurring general fund appropriations of \$246,201 for a total of \$2,392,183. An increase of \$146,112 funded the additional cost of judicial retirement for the Administrative Law Judges currently eligible to enter the Judicial Retirement System. An additional \$33,638 was appropriated to provide a 7% pay increase for staff attorneys. The justification for this request was to provide parity with the salaries of attorneys at other state agencies in order to reduce turnover rates for attorneys at the ALC. The amount of \$66,461 was appropriated for the court to address its information technology needs. The agency’s other funds revenue of approximately \$1.5 million is derived almost entirely from docket fees with a small amount from copying charges and sale of publications. These revenues are used in conjunction with state appropriations for costs associated with hearings and court administration. The agency carried forward \$202,124 in General Funds and \$300,067 in other funds for a combined total of \$502,191.

Expenditures

The ALC spent \$3,251,271 in FY 14-15. Approximately 85% of the court’s expenditures are for personal services and associated fringe benefits. For the past two years, the agency has spent approximately \$25,000 annually on employee bonuses ranging from \$700 to \$3,000 under proviso 117.55. This is approximately 1.2 percent of its total personal services appropriation. The remaining 15% is spent for other operating expenditures such as rent and leasing of vehicles. As part of these operations, the agency has spent \$24,000 annually for the services of a lobbying firm.

Expenditures: Information Technology (IT)

According to the courts, new state-wide cyber security requirements will force it to invest in a continuous information technology effort to address the revised IT policies promulgated by the Division of Information Security. Previously the court contracted with the Department of Parks, Recreation and Tourism (PRT) for limited IT support. The court used its increased appropriation for information technology to hire a full-time staff person to manage the agency’s technology needs. The agency has already secured the services of the staff member at PRT who was previously providing IT support to ensure a smooth transition to performing these functions in-house.

D. Staffing

Staffing at the Administrative Law Court has been static over the last three years. Including the Chief Administrative Law Judge and five Administrative Law Judges, the ALC has 44 authorized FTE’s. Each of the six administrative law judges has one judicial law clerk or research assistant assigned to them. (One has a research assistant in lieu of the law clerk.) The remainder of the agency is divided into four sections with each reporting to the Chief Judge. The Office of Motor Vehicle Hearings is comprised of five hearing officers. The Clerk’s Office includes the clerk and associated administrative staff. The Office of General Counsel houses the 7 staff attorneys. The Office of Finance and Personnel has only three FTEs

assigned. In FY 13-14, two of the six staff attorneys left and, in FY 14-15, one staff attorney and three of the five law clerks left the office. There was a discrepancy between the agency's personnel records and those of the State Division of Human Resources. The agency had ten filled positions and seven vacant positions that were not properly established in the State Human Resources system and therefore did not show up on their reports. The Administrative Law Court has worked with the State Division of Human Resources to ensure that these positions are correctly established and reflected in the HR reporting system.

E. Jurisdiction & Office of Motor Vehicle Hearings

Jurisdiction

South Carolina law governs the Administrative Law Court's jurisdiction over contested cases, appeals, regulation hearings, and requests for injunctive relief.

In contested cases, the administrative law judges preside as the fact finder involving departments of the executive branch. With several exceptions, the court is permitted to hear all appeals from final decisions of contested cases heard by state agencies pursuant to the Administrative Procedures Act, Article I, Section 22 of the South Carolina Constitution, or another state law. Additionally, administrative law judges preside over public hearings held during the promulgation of regulations by a department of state government for which the governing authority is a single director. The Administrative Law Court also has jurisdiction to hear a state agency's request for injunctive or equitable relief. The court may review and enforce an administrative process issued by a department of the executive branch of government.

Finally, all decisions of an administrative law judge, except regulation hearing reports and interlocutory orders, are subject to appellate review. The Court of Appeals hears appeals from Administrative Law Court decisions.

Office of Motor Vehicle Hearings (OMVH)

The Office of Motor Vehicle Hearings is an office within the Administrative Law Court. The Chief Judge of the ALC is responsible for the administration of the office, assigning cases, assigning administrative duties and responsibilities of the hearings officers and staff, and establishing rules governing the practice and procedures before the Office of Motor Vehicle Hearings. There are five hearing officers around the state who hear implied consent, habitual offender, financial responsibility, and license suspension hearing cases. The officers use county and city government buildings, free of charge, to conduct hearings. Last year, roughly 6,900 cases were heard, of which approximately 90 - 95% were implied consent cases.

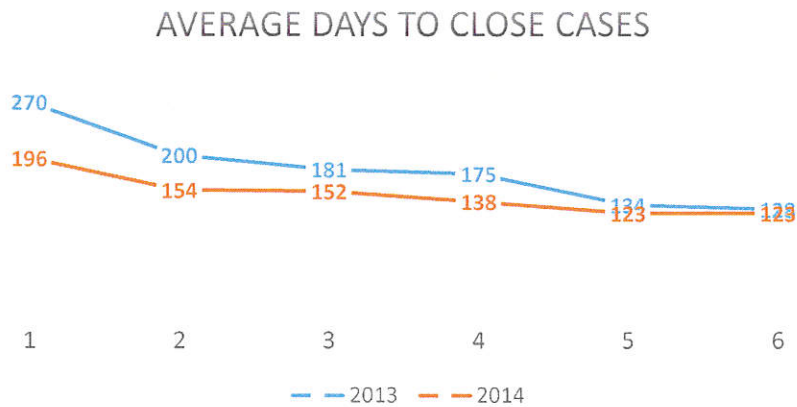
II. Issues

A. Information Technology: Case Management System

The court uses an internal case management system to manage its caseload. The system currently does not allow for electronic filing and requires manual entry of documents. There are no requirements for the entry of information into the system except the scheduling of hearings and certain orders. The court plans to move to electronic filing but has not determined how or when it will achieve that.

The clerk's office sets up each case in the caseload management system and then it is the responsibility of each judge's law clerk to enter information. There are no procedures which require any documents or filings to be included in the system except for certain orders. The final order in a case is also put on the court's website. The court is working to develop a document database where completion of those documents will automatically be included with the case file.

The case management system provides limited information about the progress of cases and is not a useful tool for measuring accurately the progress or timeliness of cases. The length of time between the entry of a case in the system and when the final order is entered can be measured. The average number of days per judge to complete cases decreased from 2013 to 2014.



If the court implements mandatory e-filing, all of the documents would be in the case management system and the work flow could be tracked more accurately. The court has not determined how to move forward with e-filing. Updates have been done to the current system which would allow them to add e-filing. They could also issue an RFP to acquire a new system. One concern the court has is the electronic payments by the parties for the filings. There is a charge for processing the online payments, but the court doesn't have the authority to charge that fee to the party if it requires all parties to use electronic filing.

- Agency Recommendation: The Administrative Law Court should include all of the documents associated with a case in its case management system.

B. *Statutory Authority*

Under South Carolina law, the Chief Judge is responsible for the “administration of the division, including budgetary matters, assignment of cases, and the administrative duties and responsibilities of the support staff. The chief judge shall assign judges of the division to hear all cases of the various state departments and commissions for which it is responsible on a general rotation and interchange basis by scheduling and assigning administrative law judges based upon subject matter no less frequently than every six months” [S.C. Code § 1-23-570 (1976)]. In its FY 14-15 Agency Accountability report, the agency stated that “[a]lthough the Chief Judge is the administrator of the court, each ALJ has complete autonomy over the cases he or she is assigned to adjudicate. Therefore, each ALJ and his or her law clerk are responsible for ensuring the fair and prompt disposition of the cases assigned to their office. There is no required uniformity among the judges’ offices nor are there requirements that mandate compliance with the timeframes of workflows . . . [T]he Court’s current structure, with six autonomous judges’ offices, does not lend itself to centralized oversight of case disposition processes. In order for the General Assembly and the public to continue to hold the ALC accountable, legislative changes may be necessary to provide such oversight.”

The Chief Judge is not able to directly assert authority over the work ethic of the judges or the timeliness of judicial orders issued by the other judges. South Carolina law states that rules governing the court’s internal administration and operations must be either proposed by the Chief Judge and adopted by a majority of the judges, or proposed by any judge of the court and adopted by seventy five percent of the judges (S.C. Code Ann. §1-23-650). While Judge Anderson has the authority to run the ALC and OMVH offices and manage administrative staff, he must work with the other judges to set rules to govern themselves.

By comparison, North Carolina’s chief state administrative law judge has the express statutory authority to employ full-time assistant administrative law judges. The chief judge has the power to determine compensation levels for ALJ positions, as well as establish different levels of ALJ positions. The chief judge essentially has the statutory authority to operate like the chief executive officer of a company; however, a major distinguishing factor is that the chief judge is appointed by the Governor, while the SC ALJ’s must go through Judicial Merit Selection Commission screening and be elected by the General Assembly.

While our Chief Judge does not have the statutory authority that the North Carolina Chief Judge has, there is an expectation that the screening and election process provides for a certain level of professionalism and judicial conduct that would mitigate some of the concerns that Judge Anderson has expressed. If cases are not being disposed of in a timely manner, the Chief Judge does have the statutory authority to assign cases reactively to allow the judges to catch up on issuing their orders. He may also propose rules to the other judges for adoption that would address these concerns. Ultimately, the General Assembly is able to hold the ALC accountable and provide oversight through the judicial election process.

C. Administration: Performance Measures & Case Assignments

Performance Measures

The mission stated by the court 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.” To measure whether it is meeting that mission, the court uses two performance measures: the age of disposed cases and the workload. Neither of these measures the fairness or objectivity of the hearings.

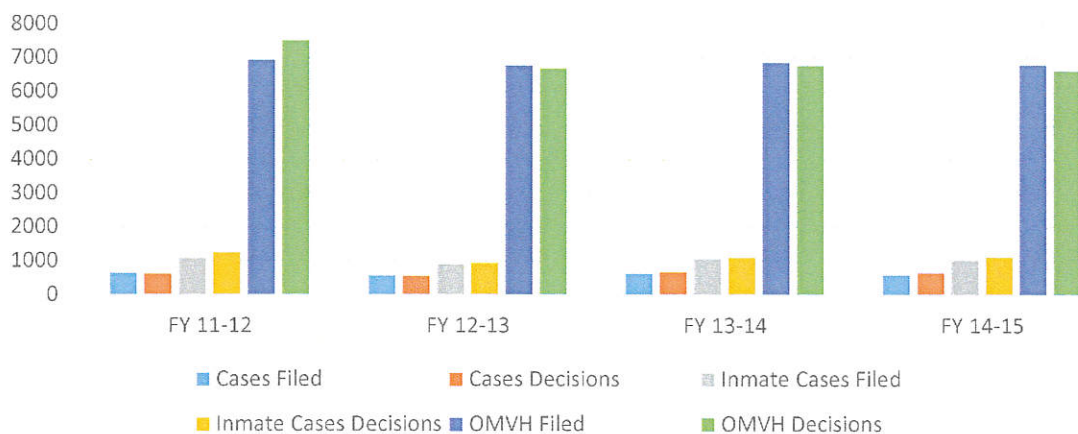
The court includes in its annual accountability report the age of disposed cases during the year and the percentage of those cases which met the objective for that type of case. For the last four fiscal years, the court reported that almost 60% of the cases met the objectives and the average age of cases all substantially exceeded the objective.

| | FY 11-12 | | FY 12-13 | | FY 13-14 | | FY 14-15 | |
|-------------------------|----------|----------|----------|----------|----------|----------|----------|----------|
| | Avg. Age | Met Obj. | Avg. Age | Met Obj. | Avg. Age | Met Obj. | Avg. Age | Met Obj. |
| Category I (90 days) | 120 | 52% | 113 | 54% | 127 | 52% | 147 | 58% |
| Category II (120 days) | 161 | 49% | 193 | 43% | 240 | 25% | 216 | 35% |
| Category III (180 days) | 248 | 50% | 272 | 44% | 221 | 53% | 214 | 63% |
| Category IV (120 days) | 373 | 60% | 106 | 73% | 121 | 64% | 114 | 55% |
| All Cases | 314 | 57% | 142 | 64% | 146 | 58% | 192 | 54% |

According to the court, these objectives were established many years ago before they had motions and discovery. The court is working on new timeframes which should be reflected in the FY 15-16 reporting. The court does not have a goal for the percentage of cases to meet the goal. For example, the Judicial Department has a goal for all of its circuits to dispose of 80% of their cases within its time frame benchmarks.

The workload of the court has generally also increased. The decisions issued by the court roughly equal the cases filed so the court is keeping up with its workload.

ALC Workload by Type of Case



Additional measures could be used to evaluate whether hearings are fair or objective. Cases appealed, cases overturned on appeal, and cases dismissed for failure to comply with requirements are possible measures that could be used as evidence of fairness or objectivity. Additionally, an analysis of these and the promptness measures should be done to identify issues and address concerns found.

- Agency Recommendation: The Administrative Law Court should develop performance measures to evaluate the fairness and objectivity of its hearings. These measures along with the promptness measures should be analyzed to improve the operations of the court.

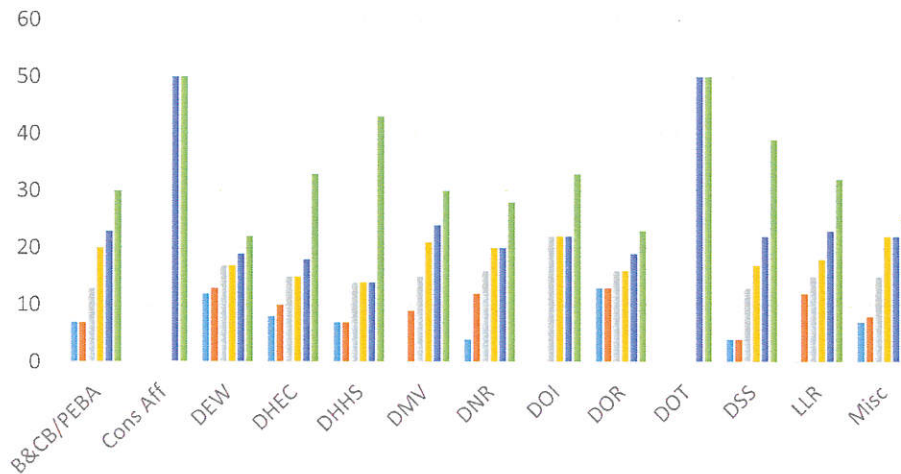
Case Assignments

We reviewed how cases are assigned to judges and the distribution of cases among the judges to identify any disparities. We found that the cases were assigned in accordance with the court’s process and the distribution of cases among the judges varied by type of case.

S.C. Code §1-23-570 states that “the chief judge shall assign judges of the division to hear all cases of the various state departments and commissions for which it is responsible on a general rotation and interchange basis by scheduling and assigning administrative law judges based upon subject matter no less frequently than every six months.” The court has a rotation schedule with two groups of cases divided by subject matter and case type assigned among three judges per group. The judges assigned to a group of cases changes every three months. The court does not have written procedures describing its case assignment process. The cases are received in the Clerk’s office and, about once a week, are assigned to judges as approved by the Chief Judge. The court considers the type of case and the issues raised when making the assignments. Judges can be assigned cases outside of their group for reasons such as related cases and conflicts. An average of 5% of cases are assigned to judges outside of their assignment group.

Each judge has about one-sixth of the total cases. We reviewed the 839 cases assigned for FY 13-14 and the first two quarters of FY 14-15. When reviewing the cases assigned by the state agency involved, there is less uniformity in the assignments although there were no issues noted with the assignment of cases.

Percentage of Cases Assigned to Judges



When there are a large number of cases, the percentages assigned to each judge are more uniform. For example, there were 358 DOR cases assigned during this time period and the cases assigned to each judge ranged from 47 (13%) to 84 (23%). There were only 14 DHHS cases during the same time period with assignments ranging from 1 (7%) to 6 (43%).

The court noted that there is not a schedule to change the case groupings. It is evaluated when caseloads change. To ensure more equitable distribution of cases, the court should review the grouping of cases for assignments.

- Agency Recommendation: The Administrative Law Court should evaluate the case groupings for assignments to judges when disparities are noted among the assignments or caseloads change.