

Section 7
organization and Staffing Issues
Office of Administrative Hearings

KPMG Peat Marwick
Government Services Management Consultants
for
North Carolina General Assembly
Government Performance Audit Committee
December 1992

Issue Statement

This paper analyzes the operations and costs of the State's central agency for providing administrative hearings. It also evaluates the organization of the Office of Administrative Hearings, the agency responsible for this function.

Background

The Office of Administrative Hearings (OAH) is an independent, quasi-judicial agency established in 1985 by Chapter 150B of the General Statutes that provides citizens with an impartial resolution of disputes with State agencies. A citizen can petition OAH if an action of an agency aggrieves them - for example, if an agency refuses to give them a license, levies a fine, revokes a license, etc. This "central panel" ensures that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same agency and prevents the commingling of legislative, executive, and judicial functions in the administrative process.

In addition to administrative due process, OAH has two other functions:

- Publishing the *North Carolina Register* and the *North Carolina Administrative Code*
- Investigating State employees' allegations of civil rights violations

There are 38 positions in OAH: 9 administrative law judges, 4 positions in the publications department, 9 positions in the Civil Rights Division, and 16 support positions (i.e. personnel, budget, and hearing room support staff).

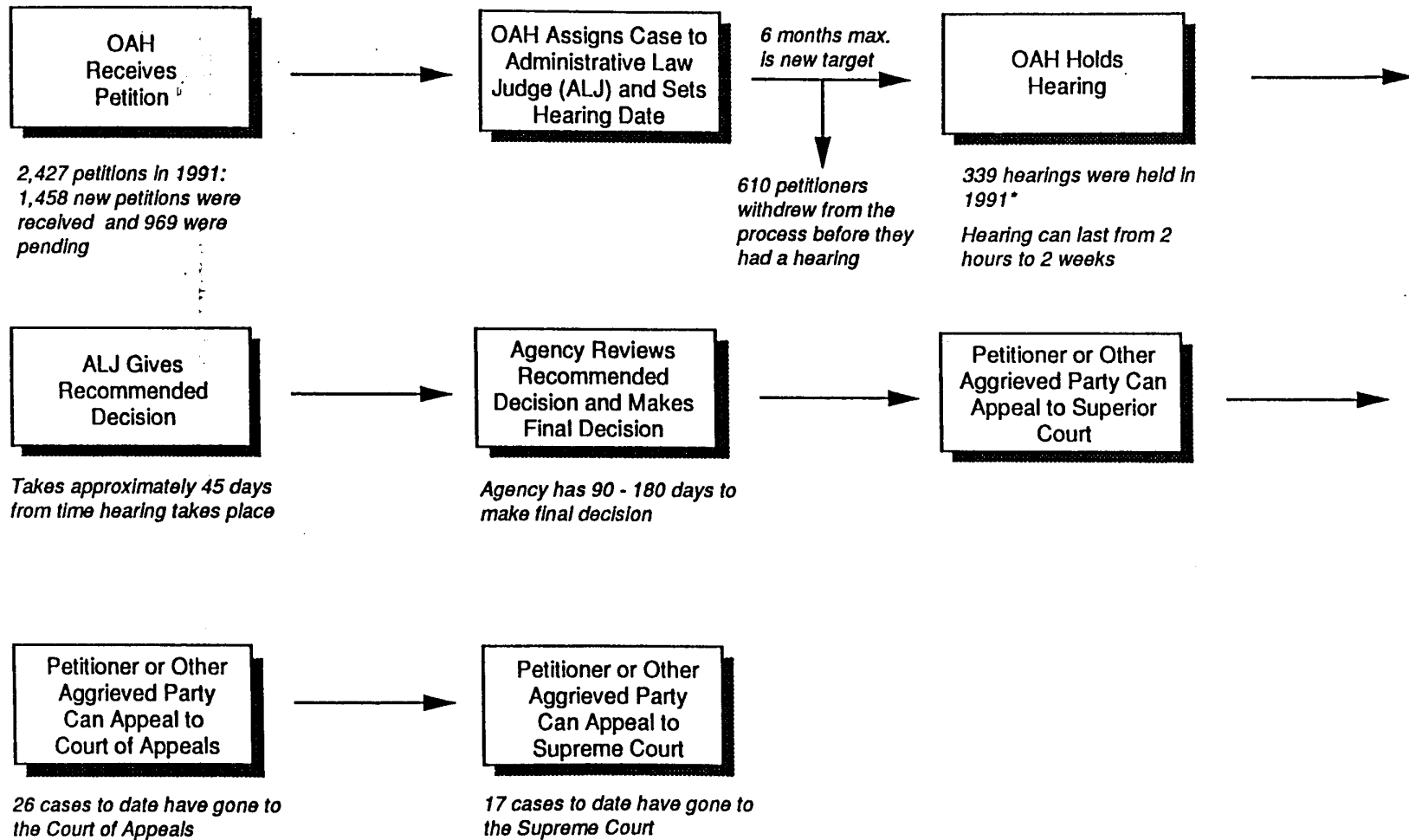
Exhibit 1 illustrates the administrative hearing process in North Carolina. When OAH receives a petition, the case is assigned to an administrative law judge and a hearing date is set. OAH's goal is to hold the hearing no more than six months from the date the hearing is set. The hearing may be held in the petitioner's home county, the county where the State agency maintains its principal office, or any county where the administrative law judge deems it necessary in order to accommodate witnesses or ensure justice. Exhibit 2 shows the number of new petitions filed with OAH and the number of hearings actually held since 1986.

EXHIBIT 2
Petitions Filed and Hearings Held

	1986	1987	1988	1989	1990	1991
New petitions filed	612	1,282	1,454	1,423	1,438	1,458
Number of hearings	113	165	207	326	388	339

Source: Office of Administrative Hearings

EXHIBIT 1 The Administrative Hearing Process



*T remaining cases are pending

As the table shows, over the last three years, OAH has conducted hearings in 22 to 27 percent of the total number of contested cases filed with OAH. In comparison, the Superior Courts of North Carolina hear about 16 percent of all civil cases filed.

At the hearing, each party can testify on his or her own behalf, present documents and records, have material witnesses testify, question opposing parties and witnesses, explain or rebut evidence, examine documents that are accepted into evidence, and be represented by an attorney. Once the hearing is completed, the administrative law judge makes a recommended decision and it is mailed to the parties. The agency has 90 to 180 days to make a final decision, although OAH has no authority to enforce this time limit. Each party has an opportunity to file exceptions to the decision recommended by the administrative law judge, and to present written arguments to those in the agency who will make the final decision.

As shown in Exhibit 3, most of OAH's cases come from the Alcoholic Beverage Control Board, Department of Human Resources, Environment Health and Natural Resources, Equal Employment Opportunity Commission, and the Office of State Personnel.

Certain State agencies and commissions still retain their own hearing officers because of the volume of cases, including the Utilities Commission, Industrial Commission, Department of Revenue, Department of Correction, the University System, Occupational Safety and Health Review Board, certain Department of Human Resources cases, and certain Environment, Health and Natural Resources cases. At the request of an agency, the chief administrative law judge may provide an administrative law judge to preside at hearings of public bodies not otherwise authorized or required by statute to utilize an administrative law judge from OAH.

Cases in which an employee disputes the fairness of his performance evaluation or the sufficiency of the increase awarded, or who believes that he or she was unfairly denied a performance increase are not heard by OAH.

Findings

Finding 1: Decentralizing OAH's hearings function would substantially increase costs and create the perception of an unfair hearing process.

Prior to the creation of OAH in 1985, each State agency had its own hearing officers. The number of hearing officers ranged from 46 in DMV (some were part-time) to 2 part-time officers in the State Treasurer's Office. Under this system, the same agency that investigated and charged a party with a violation of law was the same agency that tried and adjudicated the offender. For example, if the owner of a bar was charged with a violation of an ABC law (that was created by ABC), the bar owner would have to petition back to ABC for a hearing and ABC would hold the hearing. No matter how fair this process may have been, the perception of fairness was absent. Under the current central panel system, the hearing function has been consolidated in one central agency so that the hearing officers are not subject to the influence of the agencies.

EXHIBIT 3
Petitions Filed by Agency, 1986-1991

Agency	1986	1987	1988	1989	1990	1991	Total
ABC	204	348	433	428	297	265	1,975
Commerce	1	0	1	1	4	1	8
Crime Control	0	0	2	37	40	45	124
Child Sup. Enf.	0	25	50	191	221	266	753
Agriculture	0	0	0	0	0	3	3
Comm. College	0	1	1	0	0	0	2
Cultural Res.	0	0	1	0	0	0	1
DHR	117	157	191	151	171	192	979
EHR	0	0	0	86	281	241	608
DOA	1	1	6	2	5	3	18
DOJ	6	64	65	51	59	38	283
DOL	0	3	10	14	12	21	60
DOT	0	0	1	1	0	0	2
St. Treasurer	4	2	8	13	14	30	71
DPI	0	1	14	30	16	19	80
EEOC	0	151	173	157	121	128	730
DOI	109	4	5	5	2	8	133
Sec. of State	2	0	0	0	0	0	2
NRCD	61	106	100	69	0	0	336
State Auditor	0	0	0	0	1	2	3
OAH	0	0	0	0	1	0	1
OSP	98	156	146	172	179	185	936
ESC	0	0	0	0	0	2	2
Boards & Comm.	7	223	51	15	14	9	519
Total	610	1,242	1,458	1,423	1,438	1,458	7,629

Source: Office of Administrative Hearings

The legislation creating OAH included a provision which, if not repealed, would have transferred the administrative hearing process back to the individual State agencies. In 1991, the General Assembly repealed the provision and reaffirmed the mission of OAH. The General Assembly based its decision in part on OAH's estimate that the first-year cost to the State to decentralize this process would be \$5 million. OAH's 1992-93 operating budget is approximately \$1.9 million. This first-year figure did not include a cost of approximately \$1.7 million to fully close all pending cases and assist in the transfer of OAH functions and assets to other locations. For the second and successive years, the cost of performing the administrative hearing process in a decentralized manner would have cost the State \$3.1 million, according to OAH.

A study prepared by the Fiscal Research Division also suggests that decentralizing the hearing process back to agencies will substantially increase State costs. In 1985, before OAH was established, the division prepared a report that documented the costs of rulemaking, contested cases, and appeals in the agencies and licensing boards. The report found that, in 1983-84, the total cost for rulemaking, contested cases, and appeals was approximately \$4.5 million. In fiscal year 1984, there were 38 full-time hearing officers in the agencies and 142 other employees who spent part of their time on administrative hearings and part of their time on other duties.

Finding 2: *After the State conducts this impartial and sometimes lengthy hearing process, approximately 18 percent of judgements are ignored or only partially adopted by State agencies.*

Under existing law, an agency has the right to ignore an administrative law judge's decision because it is only a recommended decision and is not binding to the agency. Exhibit 4 shows the percentage of recommended decisions that were adopted by the agencies from 1989 to 1991. OAH indicated that when the agencies reject the administrative law judge's decision, about 90 percent of the time they do so to counter a decision that was adverse to the agency.

EXHIBIT 4 Final Agency Decisions

	1989	1990	1991
ALJ* Recommended Decision Adopted by Agency	68%	80%	82%
ALJ Recommended Decision Partially Adopted by Agency	11%	9%	9%
ALJ Recommended Decision Rejected by Agency	21%	11%	9%
Total	100%	100%	100%

Source: Office of Administrative Hearings

*ALJ = Administrative law judge

If the petitioner or other aggrieved party is not satisfied with the agency's final decision, the petitioner or other aggrieved party may ask for review of the decision by a Superior Court judge without a jury. The Superior Court judge reviews the transcript that OAH has prepared and gives his or her decision. The aggrieved party may also petition the court to present additional evidence. The Superior Court's decision may then be appealed to the Court of Appeals, whose decision can in turn be appealed to the Supreme Court. Since OAH's inception in 1985, approximately 26 cases have been appealed to the North Carolina Court of Appeals and 17 to the Supreme Court of North Carolina.

The goal of OAH for 1992 is to shorten the time period for hearings to six months and the average length for all cases to five months. To help meet this goal, OAH has implemented a new calendaring system which is based on geographical districts and central locations for hearings. The old system relied on a method in which each administrative law judge set his or her own cases on an individual basis. The new calendaring system should significantly reduce the hearings' case disposition times and increase the efficiency of the process.

Finding 3: Fifteen other states have central hearing agencies similar to OAH.

Approximately 15 states have agencies and programs similar to OAH. Minnesota was the first state to initiate the central panel system, and North Carolina modelled its system after Minnesota's.

The state of Maryland recently created a central hearing agency. Prior to the creation of its central hearing agency, most agencies in Maryland had their own hearing officers. A 15-member task force created by the governor to examine the administrative hearing process in the agencies overwhelmingly recommended the creation of a central hearing system. The following flaws were cited in the decentralized hearing system:

- Hearing officers in agencies are not well supervised
- Procedures and standards vary from agency to agency
- The administrative hearing process is poorly operated
- Written opinions issued by hearing officers do not withstand judicial scrutiny
- Some hearing officers have no legal training
- Hearing officers in the agencies have low salaries and it is therefore difficult to recruit

The task force recommended that all hearing officers be organized into one independent office within the Executive Department, with the exception of highly unique agencies such as the Workmen's Compensation Commission, Public Service Commission, and the Inmate Grievance Hearing Examiners in the Division of Corrections of DPSC. Although several states finance

their central panel operations by charging user agencies on a "fee for service" basis, Maryland (like North Carolina) uses the normal budgetary processes and allocations.

Finding 4: *OAH's publication activities are similar to those performed by the Secretary of State.*

In addition to its administrative hearing duties, OAH publishes the *North Carolina Register* and the *North Carolina Administrative Code*. The *North Carolina Register* is the vehicle by which the public is made aware of new or amended rules adopted by agencies. The *Register* is published twice a month. There are four positions in OAH's publications department.

The Secretary of State has a publications division that performs similar functions as OAH's publications division. General Statute 147-36(9) authorizes the Secretary of State to maintain a Division of Publications to compile data on the State's government agencies. The Secretary of State's publications division provides the citizens of North Carolina with the information they request through publications such as the *North Carolina Manual*, the *Directory of State and County Officials*, and the *Constitution of North Carolina*.

Finding 5: *Over 43 percent of OAH's positions are support-related and perform similar functions as the Administrative Office of the Courts' staff.*

As shown in Exhibit 5, OAH has 16 support positions that are responsible for providing secretarial support and research, scheduling cases, and handling budgetary/fiscal, personnel, and other administrative matters. These positions provide many similar services to those provided by centralized divisions in the Administrative Office of the Courts (the shadings on Exhibit 5 show the similar functions). To supplement its 37 full-time staff positions that are set by statute, OAH also has three secretaries and three transcribers on personal service contracts as of May 1992.

OAH also has a regional office in High Point with a staff of one administrative law judge and one part-time secretary. The office was established on a trial basis to handle cases in the western part of the State.

Recommendations

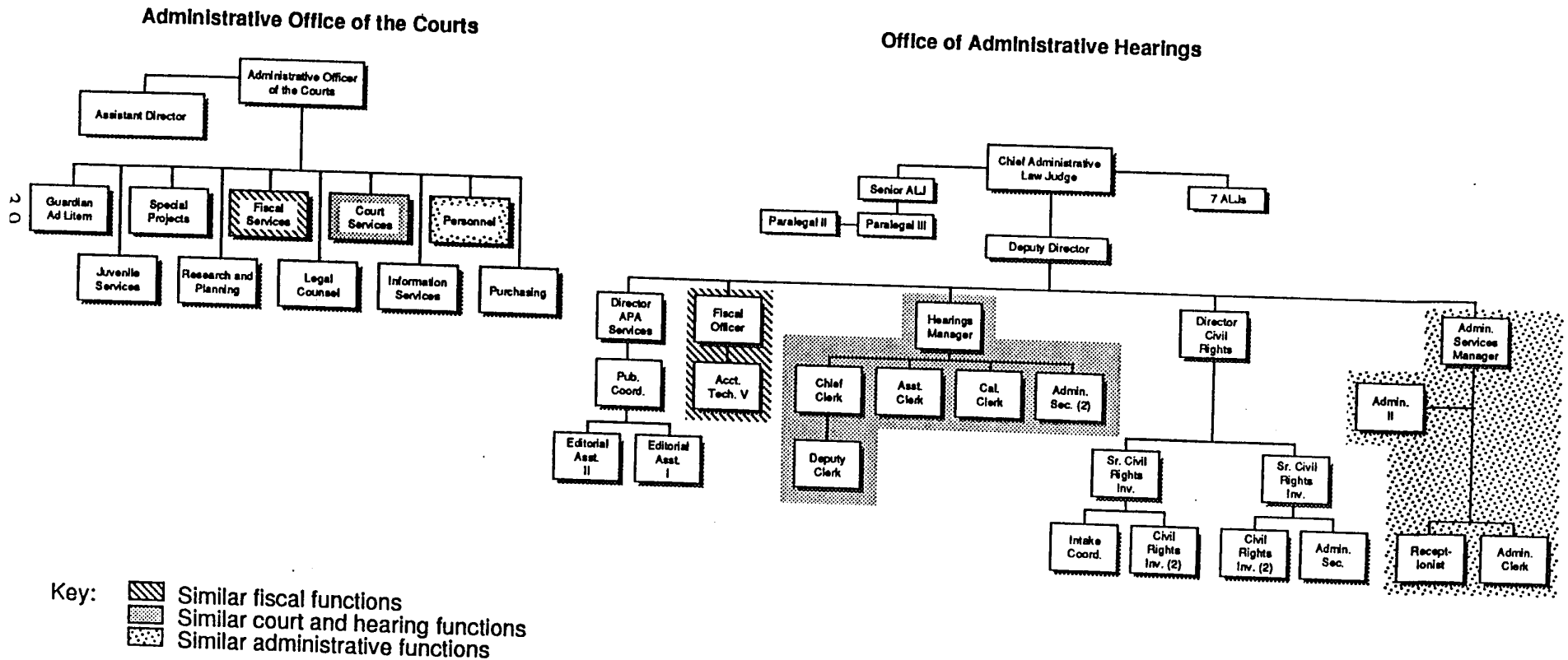
Recommendation 1: *The decisions of administrative law judges should be binding on agencies.*

The General Assembly should amend the General Statutes so that the decisions of administrative law judges are binding on agencies. If an agency disagrees with a judge's decision, appeals can be made through the normal judicial process, i.e., to the Superior Court, Court of Appeals, and the Supreme Court, if necessary. This will help reduce the length of the hearing process by eliminating the step in which the agency decides whether to accept or reject the administrative

law judge's decision and will give petitioners immediate recourse to the court system.

In addition, the General Assembly should give serious consideration to letting the Superior Court conduct a "trial de novo" on appeal, or a forum in which evidence can be presented rather than the court being able only to consider the record of the administrative law judge. The General Assembly should explore giving the court the option, at its sole discretion, based upon pleadings and motions of the parties, to hear the matter only from the record on appeal or conducting a trial de novo.

EXHIBIT 5 Organizational Comparison of AOC and OAH



Source: AOC and OAH organization charts

Recommendation 2: *The administrative hearing process should remain centralized at OAH, with support services provided through the Administrative Office of the Courts and publications responsibilities transferred to the Secretary of State.*

OAH can be streamlined and focused on its true mission by doing the following:

- **Eliminate redundant support positions.** OAH's nine Administrative Law Judges should be supported by the existing support positions at the Administrative Office of the Courts. Two support positions from OAH will be needed to handle the additional work load at the Administrative Office of the Courts. The Administrative Office of the Courts has a large, well-trained staff and systems in place to support the additional support work load from OAH. The remaining 14 support positions in OAH can be eliminated. OAH staff should be moved from its current office space so it is physically located with the Administrative Office of the Courts' staff.
- **Transfer the four positions on OAH's publishing staff to the Secretary of State,** the agency authorized to compile and publish data on the State's government agencies.
- **Eliminate the regional office in High Point,** transferring the administrative law judge to Raleigh, and eliminating the part-time secretary position.

Recommendation 3: *The General Assembly should implement a fee structure for OAH.*

OAH's operations should be funded partially by fees. This would reduce the amount of direct state funding support and would discourage frivolous cases being brought before OAH. Such a structure would impose fees on the unsuccessful litigant at a level that would cover, or partially cover, the cost of the hearing and the successful litigant's hearing costs. Certain personnel cases would be excluded. OAH could save approximately 25 percent of its budget by implementing a fee structure.

Implications. The 14 support positions in OAH can be eliminated starting in 1994. Eliminating the 14 support positions will save the State approximately \$3.9 million over 10 years. This assumes that the average State employee salary is \$24,699 and the average benefit cost is approximately \$6,520. User fees would offset hearing costs and help prevent frivolous actions from being brought before OAH. Exhibit 6 shows the estimated savings over 10 years if the 14 support positions are eliminated and a fee structure is implemented.

Citizens and State agencies should receive the same level of service since the main service providers (administrative law judges) will not be eliminated. Consolidating the rules publication function with the Secretary of State also would provide for more effective planning of State resources, both staffing and equipment, to meet the statutory requirements concerning publications.

EXHIBIT 6
Estimated Annual Savings
(1992 dollars)

	Fiscal Year ending June 30									
	Current	1994	1995	1996	1997	1998	1999	2000	2001	2002
Annual Staffing Savings	--	\$437,066	\$437,066	\$437,066	\$437,066	\$437,066	\$437,066	\$437,066	\$437,066	\$437,066
Fee Revenue	--	\$365,734	\$365,734	\$365,734	\$365,734	\$365,734	\$365,734	\$365,734	\$365,734	\$365,734
Cumulative Savings	--	\$802,800	\$1,605,600	\$2,408,400	\$3,211,200	\$4,014,000	\$4,816,800	\$5,619,600	\$6,422,400	\$7,225,200

Implementation considerations

Changes to General Statutes 7A and 150B will need to be made in accordance with these recommendations.

References

General Statutes of North Carolina, Chapter 150B - The Administrative Procedures Act

General Statutes §126-7

In Support of the APA - A Report to the General Assembly, February 11, 1991 (OAH document)

Report to the Government Performance Audit Committee, August 8, 1992 (OAH document)

North Carolina Office of Administrative Hearings (brochure)

Overview: Fiscal and Budgetary Actions (North Carolina General Assembly, 1991 Session and 1992 Session)

1989 State Auditor Performance Audit Report - Office of Administrative Hearings and the Administrative Rules Review Commission