



# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819  
BOSTON, MASSACHUSETTS 02108

A. JOSEPH DE NUCCI  
AUDITOR

TEL (617) 727-6200  
FAX (617) 727-5891

NO. 2009-0345-30

INDEPENDENT STATE AUDITOR'S REPORT ON  
CERTAIN ACTIVITIES OF THE  
DIVISION OF ADMINISTRATIVE LAW APPEALS  
JULY 1, 2005 TO MAY 31, 2009

**OFFICIAL AUDIT  
REPORT  
FEBRUARY 4, 2010**

---

**TABLE OF CONTENTS/EXECUTIVE SUMMARY**

---

---

**INTRODUCTION**

---

**1**

The Division of Administrative Law Appeals (DALA) was established in 1974 under Chapter 7, Section 4H, of the Massachusetts General Laws. DALA is under the purview of the Executive Office for Administration and Finance and is under the direction of a Chief Administrative Magistrate, who is appointed by the Secretary of the Executive Office for Administration and Finance with the approval of the Governor.

Under DALA's current enabling legislation, the main role of the organization is to provide a neutral forum for the timely adjudication of appeals of decisions by other state agencies. DALA was purposely established as an independent agency to help ensure that decisions are rendered free from the appearance of conflicts of interest or undue influence.

As of May 31, 2009, DALA's organization consisted of a Chief Administrative Magistrate, First Administrative Magistrate, nine Assistant Administrative Magistrates, and three non-attorney staff positions. The former Chief Administrative Magistrate resigned as Chief Administrative Magistrate effective August 7, 2009 and was replaced by an Acting Chief Administrative Magistrate. For our purposes we refer to the former Chief Administrative Magistrate as the Chief Administrative Magistrate throughout this report. According to the Commonwealth's records, expenditures associated with the operation of DALA for fiscal years 2008 and 2009 were \$1,353,812 and \$1,343,279, respectively. For fiscal year 2010, DALA's appropriation is \$1,102,462.

The purpose of our audit was to review DALA's internal controls and compliance with state laws and regulations pertaining to case management for the period July 1, 2005 to May 31, 2009. In certain instances, we expanded the period of our review to both older and more recent dates, as necessary.

Our audit found that DALA did not maintain adequate internal controls over its case management system which is critical in determining whether appeals are being managed, heard, and decided in a timely fashion, and did not comply with applicable laws, rules, and regulations for the areas examined relating to case management.

DALA presides over cases of public importance, and its decisions can have significant and lasting consequences for the public and for individual citizens and their families. As a result, and because of the control weaknesses contained in this report, improvements are necessary in case management to render more timely decisions.

---

**AUDIT RESULTS**

---

**6****1. DALA NEEDS TO ADOPT INTERNAL CONTROLS TO ADDRESS CASE-MANAGEMENT PROBLEMS****7**

Our audit found a wide variety of case management problems that need to be addressed by DALA administrators. Our analysis of the DALA database of case activity indicated a number of instances in which case processing and resolution is falling behind, resulting in delayed adjudication and an increased inventory of open, outstanding cases. As a result, DALA is not meeting its objective of providing timely resolution of cases.

---

**a. Deficiencies with Initial Processing of Cases** **7**

Our review found that parties are not being timely notified that DALA has received the filing of an appeal. Previously, when a case was received by DALA, it would be docketed and an acknowledgment would be promptly sent out to the parties involved. However, since July 2007, the time between the receipt of an appeal being received and its acknowledgment has increased significantly.

**b. The Backlog of Open Outstanding Cases Is Increasing Even as New Case Filings Have Decreased** **8**

Our analysis of DALA's open case inventory at various points in time shows that there are an increasing number of cases outstanding each year, even though fewer new cases are being entered for processing. As of December 31, 2001, DALA had 1,340 open cases outstanding. That number increased to 4,694 cases as of May 31, 2009. However, as discussed later in Audit Result No. 1f, this number may be overstated.

**c. Statistic of "Age of Disposed Cases" Increasing** **13**

One method of measuring the timeliness of case processing is with the Age of Disposed Cases statistic which measures the amount of time that has transpired from opening the case until disposition (decision, withdrawal, settlement, dismissal). Excluding a particular type of case (Rate Setting cases) this statistic has increased from 228 days in calendar year 2001 to 477 days in calendar year 2009. We excluded Rate Setting cases because we were told that most of these cases are old cases where an aggrieved party files an action to protect their rights in case a future change makes them eligible for a new rate and that many of these cases will have no further substantive action. Therefore, we did not focus on these cases when performing an analysis of outstanding cases over the years, so as not to distort the open case inventory.

**d. Preliminary Decisions Written But Delayed during Final Review** **16**

Although we were not provided with a formal policy or procedure for DALA's processing of case decisions, the Chief Administrative Magistrate told us that the verbal policy goal was to have a decision issued within 90 days of the close of the record in the case to correspond to statutory requirements found in DALA's enabling legislation. The Magistrate also told us that her predecessor had a policy of issuing decisions within 60 days of the close of the record. However, as of August 4, 2009 (while audit fieldwork was in progress), DALA had at least 121 cases where draft decisions were written, but the final decision had not been issued. According to the list DALA provided us, the oldest draft decision was prepared over 1 1/2 years prior (February 11, 2008), well over the 90 days the Chief Administrative Magistrate established as a goal.

**e. Decrease in Number of Hearings Held** **17**

There has been a significant decrease in the number of hearings held at DALA over the past few years. According to DALA records, the average number of hearings conducted per month has decreased from 33 hearings per month in calendar year 2007 to 16 hearings per month during 2009. Also, it was not possible to readily confirm the hearings held, since DALA case files do not contain supporting evidence of the hearing being held.

<b>f. Open Case Listings May Be Overstated</b>	<b>19</b>
<hr/>	
<p>DALA records reflect that there were 4,694 open cases as of May 31, 2009. However, this amount may include cases that have since been closed and should not have been included on the open case list. Based on our sample of the open cases, the open case list appears to be overstated, and there could be approximately 469 cases on the open case list that should be reported as closed cases.</p>	
<b>2. DALA NEEDS TO ADOPT IMPROVED CASE TIME-MANAGEMENT STANDARDS</b>	<b>24</b>
<hr/>	
<p>Our audit found that DALA did not have well-defined case management time standards and could benefit from adopting more definitive time-management standards for the cases it handles. Although current state law provides rather general time requirements, DALA could benefit from adopting more definitive time standard benchmarks so that everyone knows what is expected of them.</p>	
<b>3. IMPROVEMENTS NEEDED IN MAINTENANCE OF CASE STATISTICAL INFORMATION</b>	<b>27</b>
<hr/>	
<p>DALA's current electronic case management system is inadequate and should be modified so that it contains a complete summary record of each case. DALA should also use the system to monitor key points of case progress so that any backlogs can be identified promptly and corrective action taken. The Chief Administrative Magistrate told us that she wanted to replace the existing system with a more integrated system, but financial constraints currently prohibit such a change.</p>	
<b>4. NEED TO COMPLY WITH STATUTORY REPORTING REQUIREMENTS</b>	<b>29</b>
<hr/>	
<p>In accordance with Chapter 205 of the Acts of 2006, DALA is required to file an annual report with legislative oversight entities. However, the Chief Administrative Magistrate told us that she had not filed this report since she took office in 2007. We recommend that, in addition to this required report, DALA should also consider the public expectation of increased accountability and transparency and prepare a more comprehensive external report to show how taxpayer resources are being used.</p>	
<b>5. SERVICE DELIVERY COULD BE IMPROVED BY IMPLEMENTING SATISFACTION SURVEYS</b>	<b>30</b>
<hr/>	
<p>DALA has not had a user feedback process in place since it did away with customer satisfaction surveys. Although state law or regulation does not explicitly require such surveys, we found that other states' administrative law organizations do have customer satisfaction surveys as part of their feedback monitoring system. Additionally, since DALA's mission by state law is to provide timely, unbiased responses to cases, user satisfaction surveys could be an important third-party mechanism to see how users rate their experience with DALA. As part of our audit work, we did a survey of various DALA users and found that users identified a number of administrative issues that have surfaced, supporting the case-management problems we reported in Audit Result No. 1.</p>	

---

<b>6. DALA SHOULD CONSIDER HOLDING HEARINGS AT ALTERNATIVE SITES TO ACCOMMODATE USERS WITH DISABILITIES AND HARDSHIPS</b>	<b>34</b>
---	-----------

---

As part of its long-range planning, DALA should consider the needs of users with disabilities and hardships and conduct a study to determine whether there is a sufficient need for DALA to start holding hearings at various locations throughout the state. Although DALA is located close to public transportation, some of DALA's users have medical conditions that make it difficult to travel to DALA to attend a hearing. Also, users located a long way away from the Boston office of DALA incur additional transportation and legal expenses for attending hearings.

<b>7. IMPROVEMENTS NEEDED IN DEVELOPING AN INTERNAL CONTROL PLAN AND CONDUCTING PERIODIC RISK ASSESSMENTS</b>	<b>36</b>
---	-----------

---

Our review found that DALA has not conducted a risk assessment or developed an internal control plan, as required by state law and the Office of the State Comptroller. As a result, DALA's efforts to ensure the integrity of its records and assets are diminished.

---

<b>APPENDIX I</b>	<b>39</b>
-------------------	-----------

---

<b>New Appeals Received and Opened by Type of Case by Year, January 1, 2000 to May 31, 2009</b>	<b>39</b>
---	-----------

---



---

<b>APPENDIX II</b>	<b>40</b>
--------------------	-----------

---

<b>Days Elapsed between Receipt of New Appeal and Submission of Acknowledgement</b>	<b>40</b>
---	-----------

---

## INTRODUCTION

### *Background*

The Division of Administrative Law Appeals (DALA) was established in 1974 under Chapter 7, Section 4H, of the Massachusetts General Laws. Originally, the Division was known as the Division of Hearing Officers, and its purpose was to replace the in-house hearing officers of the Commonwealth's Rate Setting Commission. By 1978, DALA's jurisdiction was expanded to include the Contributory Retirement Appeals Board, the Civil Service Commission, and any other state agency that requests DALA to conduct a hearing. In 1983, the name of the agency was changed to its current name of the Division of Administrative Law Appeals. DALA is under the purview of the Executive Office for Administration and Finance (EOAF) and is under the direction of a Chief Administrative Magistrate, who is appointed by the Secretary of the Executive Office for Administration and Finance with the approval of the Governor. Our audit period covers the tenure of two Chief Administrative Magistrates. One Chief Administrative Magistrate held office for a number of years prior to the next Chief Administrative Magistrate's being appointed in July 2007 until she resigned effective August 7, 2009, while our audit fieldwork was in progress. The First Assistant Magistrate was appointed as Acting Chief Administrative Magistrate at that time. For our purposes, we refer to the Chief Administrative Magistrate in office during the period of July 2007 until August 2009 as the Chief Administrative Magistrate throughout this report.

Cases come to DALA in two ways. Certain classes of cases are assigned to DALA by statute, such as appeals of citations issued by the Office of the Attorney General for violations of the fair wage and hour laws. Other classes of cases are heard upon request - any agency authorized to conduct hearings may request that DALA hear those cases, subject to the approval of the Secretariat in which the requesting agency sits, DALA's Chief Administrative Magistrate, and the Secretary of EOAF.

The subject matter of DALA proceedings is as diverse as the activities of the agencies for which DALA hears cases. DALA magistrates routinely preside over cases of public importance and DALA's decisions can have significant and lasting consequences for the public and for individual citizens and their families. Pension eligibility issues and disciplinary actions involving physicians may be among the better known matters heard by the agency, but a range of other issues are addressed by DALA, including child protection and standards of care in elder care facilities, allegations of

patient abuse by licensed health care professionals, environmental protection and permitting decisions in projects ranging from construction of a single home to so-called ‘big box’ commercial developments, and charges of serious misconduct by public employees that may put the safety of the general public at risk.

In all these matters, the DALA hearing process safeguards basic fairness because allegations, whether factual, legal, or both, must be tested according to applicable standards of law. The hearing process has one of two outcomes: either the prerequisites for agency action are established, in which case the agency may proceed to act (or the agency’s prior action stands), consistent with agency’s legislative mandate, or the material allegations are not proven, in which case the agency must refrain from action (or its prior action must be rescinded). Hearings are conducted according to 801 Code of Massachusetts Regulations 1.00, Standard Rules of Adjudicatory Practice and Procedure, promulgated pursuant to Chapter 30A of the General Laws.

Under DALA’s current enabling legislation, a key role for the organization is to provide a neutral forum for the timely adjudication of appeals of decisions by other state agencies. DALA was purposely established as an independent agency to help ensure that decisions are rendered free from the appearance of conflicts of interest or undue influence. Examples of some of the agencies whose appeals are heard by DALA include:

- Board of Registration in Medicine
- Civil Service Commission
- Contributory Retirement Appeal Board
- Department of Early Education and Care
- Department of Environmental Protection
- Department of Public Health
- Department of Veterans’ Services
- Division of Health Care Finance and Policy (formerly the Rate Setting Commission)
- Division of Capital Asset Management
- Office of the Attorney General, Fair Labor Division

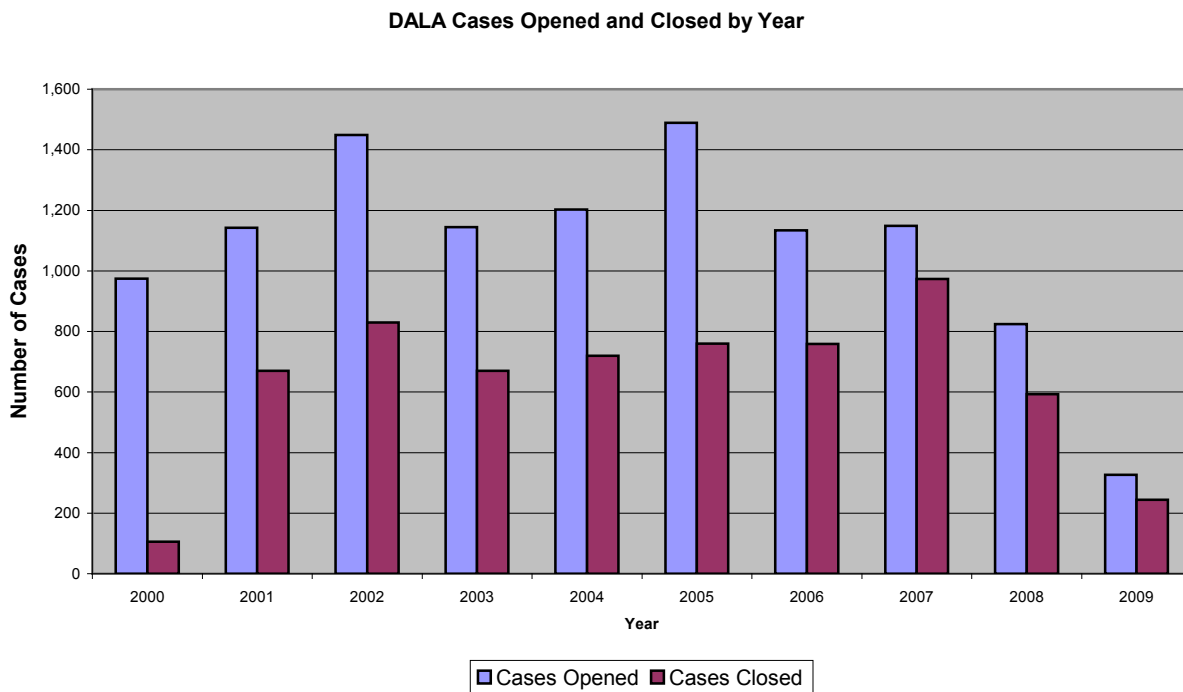
As of May 31, 2009, DALA's organization consisted of a Chief Administrative Magistrate, First Administrative Magistrate, nine Assistant Administrative Magistrates, and three non-attorney staff positions.

DALA's expenditures against its state appropriations are shown in the following table.

Fiscal Year	Expenditures
2006	\$1,143,829
2007	\$1,214,442
2008	\$1,353,812
2009 (through Accounts Payable as of August 23, 2009)	\$1,343,279

For fiscal year 2010, DALA's appropriation is \$1,102,462.

DALA's case activity is shown in the following chart, which depicts the number of cases opened and closed in each year. We have also included a chart in Appendix I of this report that further analyzes the new appeals opened by type of case. (Note that the activity for 2009 is only for a partial year through May 31, 2009, whereas other years are complete calendar years.)





The difference between the opened and closed cases by year has resulted in DALA's having 4,694 open cases in its open case inventory as of May 31, 2009. The table below shows the outstanding cases by year opened and separates case types that have a total number of outstanding open cases exceeding 50.

<b>Aging of Active Caseload Outstanding Based on Cases That Remained Open</b>						
<b>Case Type</b>	<b>Cases Opened Prior to 1/1/06</b>	<b>Cases Opened from 1/1/06 to 12/31/06</b>	<b>Cases Opened from 1/1/07 to 12/31/07</b>	<b>Cases Opened from 1/1/08 to 12/31/08</b>	<b>Cases Opened from 1/1/09 to 5/31/09</b>	<b>Total</b>
Contributory Retirement	93	176	371	413	171	1,224
Civil Service	1	1	6	32	15	55
Environmental Protection	37	21	23	16	0	97
Fair Labor	13	5	24	70	45	157
Nurse's Aides	9	2	3	19	23	56
Registration in Medicine	8	5	11	27	6	57
Rate Setting	2,407	265	251	31	25	2,979
All Others	<u>9</u>	<u>1</u>	<u>8</u>	<u>28</u>	<u>23</u>	<u>69</u>
<b>Total Outstanding Cases</b>	<b><u>2,577</u></b>	<b><u>476</u></b>	<b><u>697</u></b>	<b><u>636</u></b>	<b><u>308</u></b>	<b><u>4,694</u></b>

### ***Audit Scope, Objectives, and Methodology***

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of DALA's management controls over administrative and operational activities pertaining to case management for the period July 1, 2005 to May 31, 2009. In certain instances, we expanded the period of our review to both older and more recent dates, as necessary.

Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and, accordingly, included audit procedures and tests that we considered necessary under the circumstances.

Our audit objectives were to (1) assess the adequacy of the DALA's internal controls over its case management system to determine whether appeals are being managed, heard, and decided in a timely fashion and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding the DALA's compliance with applicable state laws, rules, and regulations.

To achieve our audit objectives, we reviewed prior audit reports, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, DALA's case-management records, and DALA's organizational structure. We also obtained and reviewed copies of statutes, DALA's electronic case-management database records<sup>1</sup> and other source documents, and conducted interviews with DALA management and staff. Additionally, we contacted certain users of DALA services to try to determine whether their experience with DALA coincided with our Audit Results. Our assessment of internal controls over administrative and operational activities pertaining to case-management activities at DALA was based on those interviews, analysis of case-management records, and document reviews.

Our recommendations are intended to assist DALA in developing, implementing, or improving internal controls and overall administrative and operational activities pertaining to case management to ensure that the DALA's systems operate in an economical, efficient, and effective manner and in compliance with applicable rules, regulations, and laws.

Based on our review, we have determined that DALA did not maintain adequate internal controls over its case-management system to determine whether appeals are being managed, heard, and decided in a timely fashion and did not comply with applicable laws, rules, and regulations for the areas examined relating to case management. A further explanation of these issues is found in the Audit Results section of this report.

Subsequent to completion of audit fieldwork, a draft audit report was provided to DALA for the purposes of eliciting responses to our audit recommendations. DALA provided a response along with supporting data totaling 28 pages. We have included portions of DALA's response that we considered pertinent in the categories of either "Auditee's Comments" or "Auditee's Response," as applicable. The full text of DALA's response and supporting data is on file with and available from the Office of the State Auditor.

---

<sup>1</sup> When analyzing DALA's Microsoft Access-based case-management records, we primarily used a well-known industry data analysis software tool called ACL, which is able to read a wide variety of electronic data types. Additionally, it will not alter source data files and it also provides a log of work performed and the results of the various audit analysis undertaken. When working with database records, it is not uncommon to have certain records return results that are abnormal. This can occur, for example, when a date for the year 2002 is misentered as 2020. In certain instances, we eliminated records that contained abnormal data fields. However, this can result in small variances between various charts and numbers shown in our audit report, depending on the source of the data being used and what operation was being performed to generate the results.

---

## AUDIT RESULTS

### *Overview*

The Division of Administrative Law Appeals (DALA) serves an important role in resolving disputes regarding compliance with the actions of government agencies promulgated by rulemaking, enforcement, or regulatory requirements of those government agencies. DALA presides over cases of public importance, and its decisions can have significant and lasting consequences for the public and for individual citizens and their families. Examples of some of the types of cases DALA handles include: ensuring that the Woman, Infant, and Children (WIC) program requirements are administered fairly and not abused; determining allegations of abuse or theft against nurse's aides; resolving cases of medical malpractice; dealing with potential environmental issues; and helping decide the outcome of retirement pay decisions. These are important issues to the citizens of the Commonwealth, but take on even more meaning to those who are a party to one of these actions. DALA's purpose is to provide a neutral forum for the appeal of decisions made by state agencies, to streamline the proceedings by narrowing the focus of the issues being contested, and limit further appeals to the Superior Court Department. In theory, limiting the focus of the case appeal should result in arriving at better decisions in a quicker timeframe.

Although the theory of better decisions in a quicker timeframe is an important goal, our audit found that DALA has been falling behind on processing and resolving cases. In summary, our audit found that cases are becoming increasingly backlogged despite fewer cases being entered and that there are numerous complaints of dissatisfaction by DALA users, both user agencies and individual petitioners. The remainder of our report looks at some of the problems we found while conducting our review and contains specific recommendations to help DALA improve its administrative law operations.

### *Auditee's Comments*

*In broad strokes, we believe the report's analysis is consistent with that of senior management and validates the conclusion reached two and a half years ago that the Division had been experiencing serious systemic problems over many years and needed management changes to address the problems. We believe we now have the management resources in place to meet these change objectives.*

*There can be little doubt that the source of most litigant dissatisfaction with the Division's performance in the past years has had its origin in the huge backlog that has been built up over the last ten years. In the short term, management can and will initiate measures to help alleviate some of the backlog problems without additional resources.*

*However, we are aware that such measures are not likely to resolve completely the long-term backlog problem given our available resources and the reality that it is unlikely that there will be additional resources in the foreseeable future. The report appears to gloss over the fact that the Division has only nine full-time magistrates and one part-time one and two administrative staff. A more than 5,000-case backlog will not realistically be eliminated by any "quick fixes" given that the agency is receiving approximately 800 new non-rate cases per year and is now operating with two fewer magistrates.*

*That being said, the suggestions for remedial measures in the report are thought-provoking and are being considered seriously by management and implemented where appropriate. The audit has given us the opportunity to review our historical performance statistics and take a close look at our operations. This review has given us the background data to help explain the Division's challenges and devise effective solutions in ways that have never been done in the past. For this we are grateful.*

## **1. DALA NEEDS TO ADOPT INTERNAL CONTROLS TO ADDRESS CASE-MANAGEMENT PROBLEMS**

Our audit found a wide variety of case-management problems that need to be addressed by DALA administrators. Our analysis of the DALA database of case activity indicated a number of instances in which case processing and resolution is falling behind, resulting in delayed adjudication and an increased inventory of open, outstanding cases. Specifically, we identified (a) deficiencies with initial processing of cases, (b) an increasing backlog of open outstanding cases even as new case filings are decreasing, (c) the statistic of "Age of Disposed Cases" is increasing, (d) preliminary decisions have been drafted but are not issued because of a delay in the final review process, (e) a decrease in the number of hearings being held, and (f) the amount of open cases may be overstated. As a result, DALA is not meeting its objective of providing timely resolution of cases. A further discussion of these issues follows.

### **a. Deficiencies with Initial Processing of Cases**

Our review found that parties are not being timely notified that DALA has received the filing of an appeal. Previously, when a case was received by DALA, it would be docketed and an acknowledgment would be promptly sent out to the parties involved. However, since July 2007, the time between the receipt of an appeal and its acknowledgment was sent out has increased significantly.

Because cases are not initially processed in a timely manner, some parties that filed appeals with DALA may not know whether their filings ever made it to DALA and end up calling DALA to try to determine whether the case was received, tying up DALA staff time to research whether the case was received and taking staff away from conducting other business. It also leaves

DALA users with a bad initial experience in using the appeal process. Additionally, some agencies rely on receiving a timely acknowledgement to know that a party has filed a case. For example, the Office of the Attorney General's (OAG) Fair Labor Division issues civil citations to businesses for violations of wage laws. If the business appeals the citation, it is supposed to mail the appeal notice to DALA as well as the OAG. However, it is not uncommon for the business to only mail the appeal to DALA. We contacted representatives of the OAG who they told us that there were instances of the OAG issuing citations for fair labor violations where the business had only requested an appeal to DALA. If the citation remains unpaid and no appeal has been filed, the OAG can lien the real property of the business of the owner/chief executive officer. Prior to issuing a lien, the OAG contacts DALA to determine whether an appeal had been received, and DALA often did not respond. Therefore, in some instances, the OAG issued a lien, even though an appeal had been filed. The lien then needed to get removed, which was quite time-consuming and complicated, as the Department of Revenue understandably did not want to remove a lien unless a business made payment on the lien.

We analyzed DALA's case-management database activity for the period January 1, 2005 to May 29, 2009 to compare the amount of time elapsed between when a case was received by DALA and when an acknowledgment was sent out. A chart of this time analysis is attached as Appendix II of this report. On average, we found that DALA had an average elapsed time of five days for the period of January 1, 2005 through June 30, 2007. From July 1, 2007 to May 29, 2009, the average elapsed time increased to 16 days. An examination of the chart in Appendix II shows that there was one noticeable increase in elapsed time during October 2006 and that there were several noticeable increases in delays from July 2007 onward.

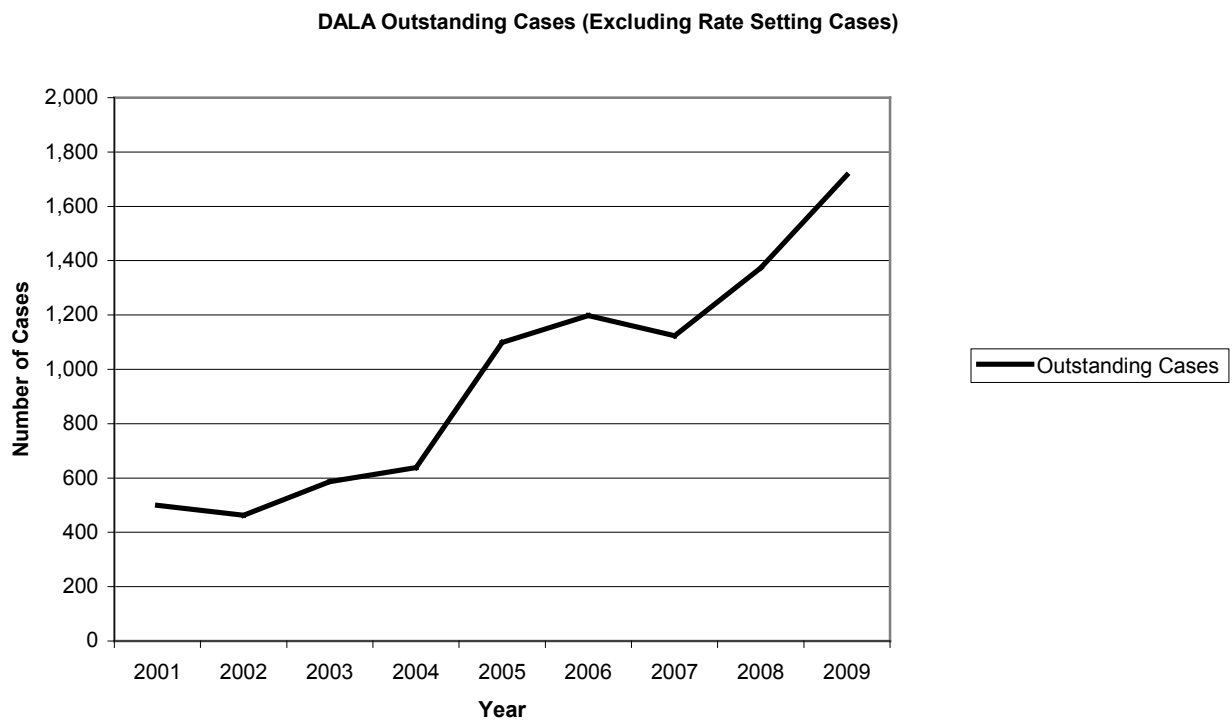
According to the Chief Administrative Magistrate, when she took office in 2007, she was concerned about DALA's operations and made various changes in DALA procedures, which may account for the delays in sending out acknowledgments.

**b. The Backlog of Open Outstanding Cases Is Increasing Even as New Case Filings Have Decreased**

Our analysis of DALA's open case inventory at various points in time shows that there is an increasing number of cases outstanding each year, even though fewer new cases are being entered for processing. For the year ended December 31, 2001, DALA's case-management

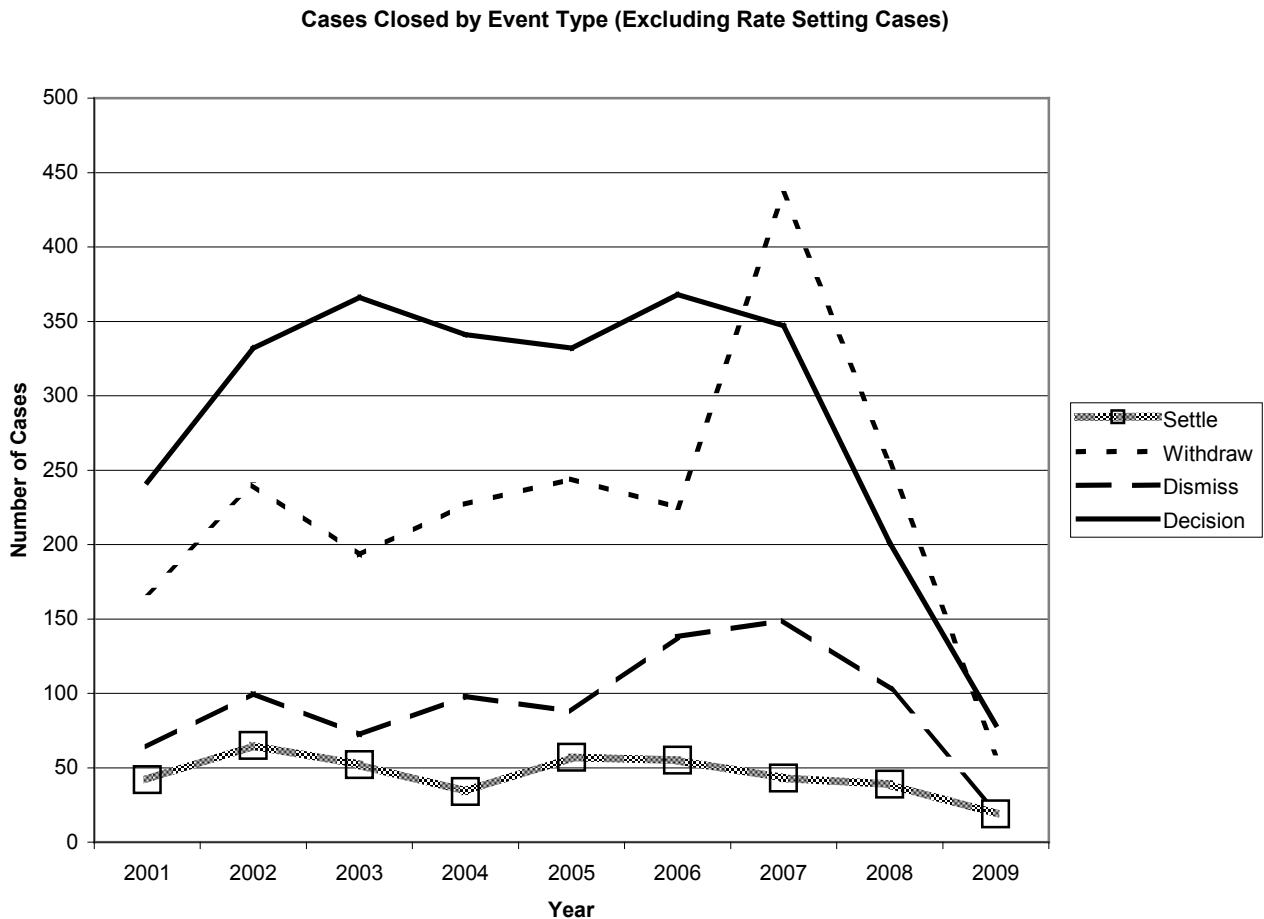
system shows that there were 1,340 cases outstanding. That number increased to 4,694 cases outstanding as of May 31, 2009. The total number of new appeal cases filed (cases opened) peaked at 1,489 cases during 2005 and decreased to 824 cases opened during 2008 (see Appendix I). For 2009, DALA is projected to open 785 cases.

As of May 31, 2009, our analysis determined that there were 4,694 cases outstanding, of which 2,979 were “Rate Setting” cases. We were told that most of these cases are old cases where an aggrieved party files an action to protect their rights in case a future change makes them eligible for a new rate and that many of these cases will have no further substantive action. Therefore, we did not focus on these “Rate Setting” cases when performing an analysis of outstanding cases over the years, so as not to distort the open case inventory. Our analysis of the outstanding cases over the years, excluding the “Rate Setting” cases, is shown in the following chart.



Part of the reason for the increase in outstanding cases for 2005 and 2006 had to do with a significant increase in case filings in 2005 attributed to an increase in Contributory Retirement cases (see Appendix I) as a result of a dispute involving what is to be considered as wages for retirement income calculation purposes.

Regarding the slight drop in cases in 2007, we further analyzed closed cases by type of action resulting in closure, using the DALA identified actions of settled, withdrawn, dismissed, and decided. This analysis was performed for all case types, excluding Rate Setting cases, using an ACL software program, with the following results.

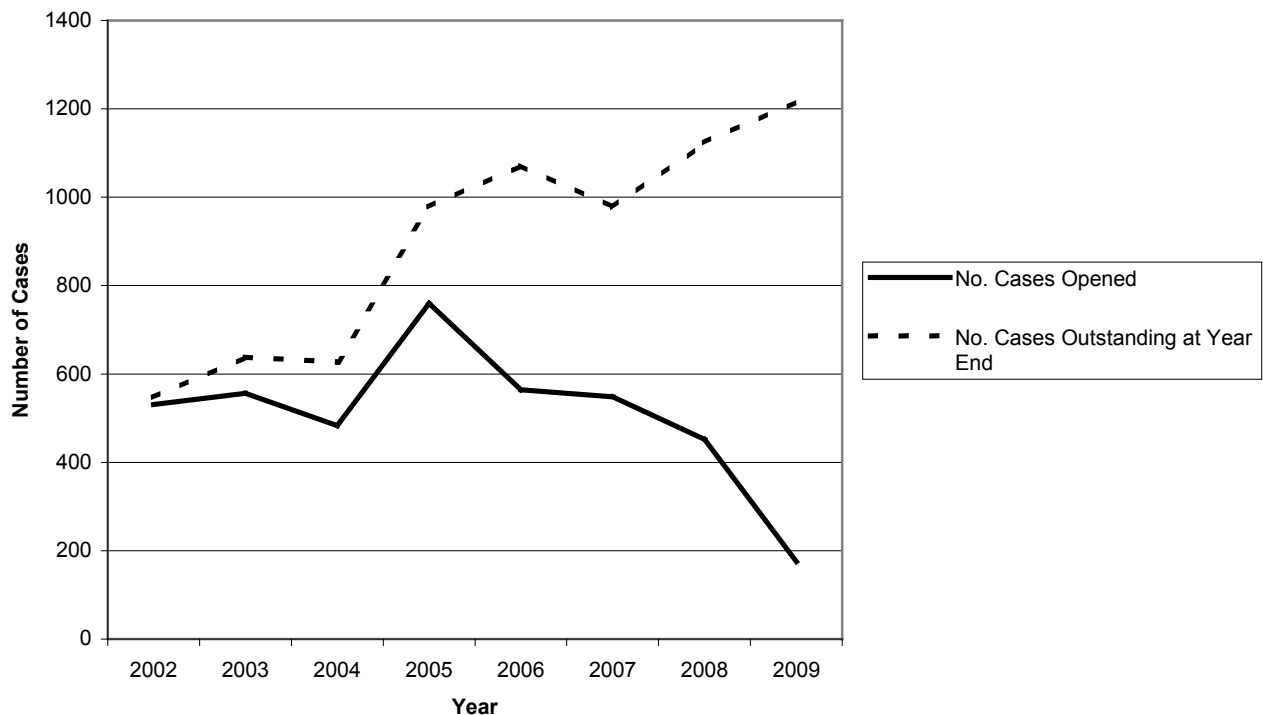


Based on the above analysis, one can see that most cases were closed by decisions for the period 2001 to 2006. Since 2007, decisions have decreased as a reason for closing cases. Also, there was a spike in withdrawals of cases in 2007 (mostly contributory retirement cases). We did examine in more detail two categories that have high levels of open cases: Contributory Retirement Appeal Board (CRAB) with 1,224 cases outstanding and the Attorney General's Fair Labor Division (LB) with 157 cases.

Our analysis showed that as of December 31, 2002, there were 547 CRAB cases on the outstanding list. As of May 31, 2009, there were 1,224 CRAB cases outstanding. The number

of CRAB cases peaked in 2005 (see Appendix I), with a change in what is to be counted toward retirement income, and has since decreased. A chart of the CRAB case activity showing the number of CRAB cases opened per year and the balance of outstanding CRAB cases as of year-end are shown below. Note that the cases opened data for 2009 is only for a partial year, as this information is based on a cut-off date of May 31, 2009.

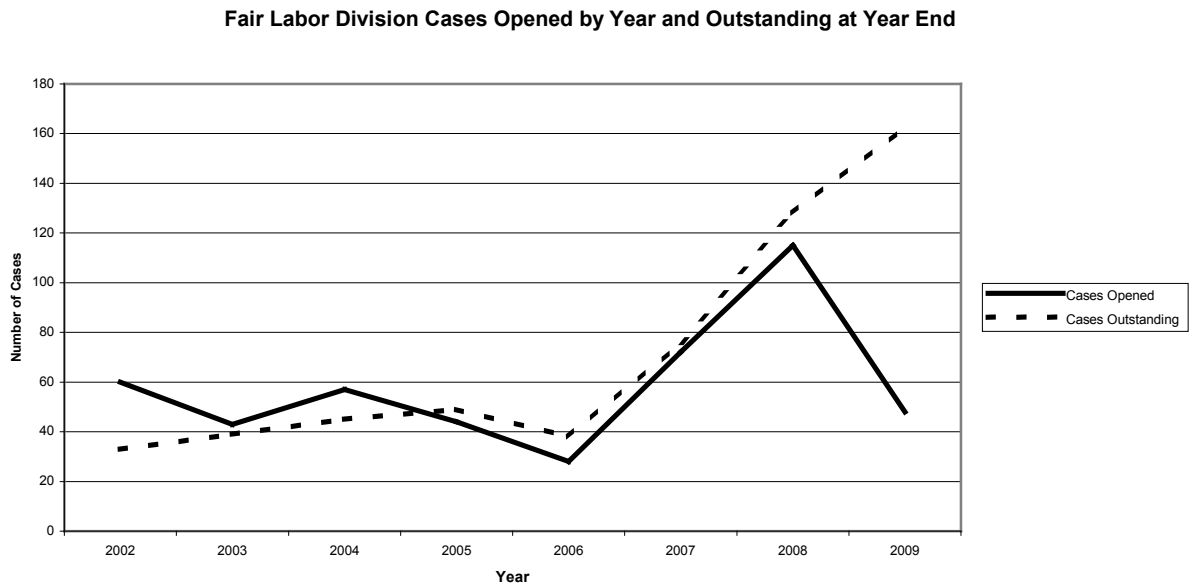
**CRAB Cases Opened by Year and Outstanding at Year-End**



The above chart illustrates that the number of outstanding cases has increased despite a significant drop in the number of cases opened. Specifically, cases opened peaked in 2005 with 760 cases then dropped to 452 cases opened in 2008, whereas outstanding cases have more than doubled from 547 cases in 2002 to 1,224 cases as of May 31, 2009.



We performed a similar analysis with the LB cases and found similar results, as follows.



Similar to the CRAB cases, the above chart of Fair Labor Division cases shows a significant increase in outstanding cases, rising from 33 cases in 2002 to 157 cases as of May 31, 2009. Cases opened also rose during the same period.

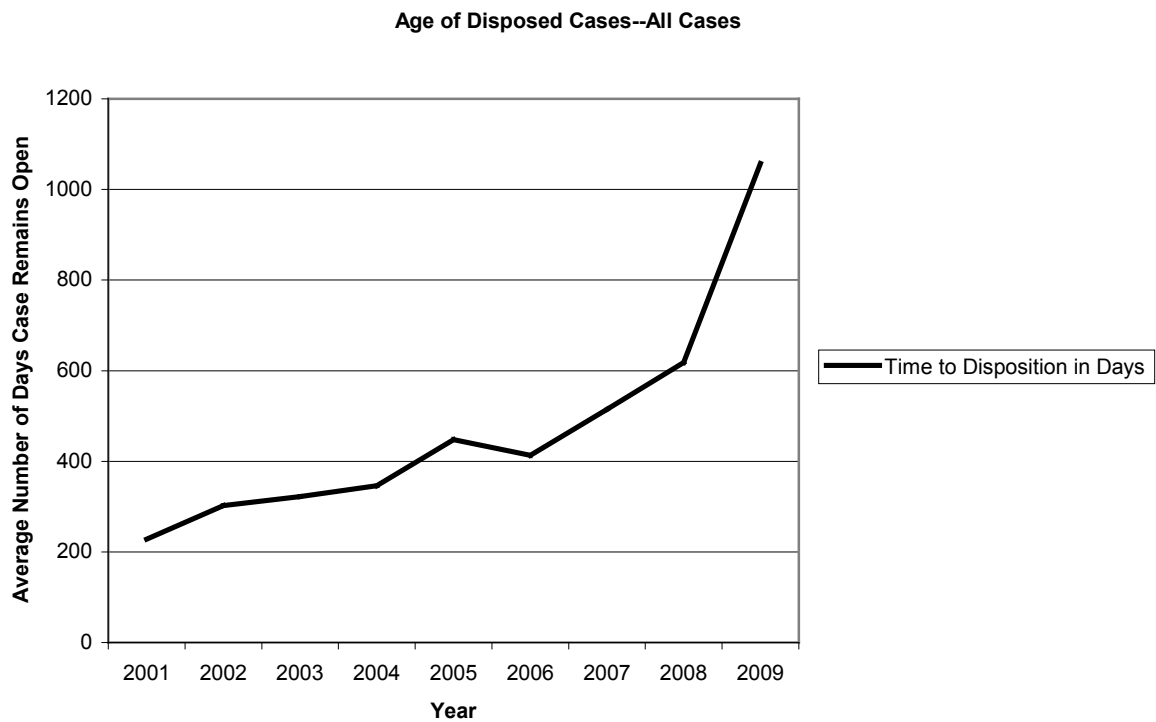
Since these are two of the larger classes of cases that DALA is expected to take substantive action on, there is a problem of not resolving cases despite the decrease in the number of new case filings. We should also note that the decline of cases opened for 2009 is somewhat misleading, since other years are presented as entire calendar years and 2009 is a partial year ending May 31, 2009.

As part of our audit analysis, we attempted to determine how much money was in dispute with the cases. We contacted the OAG's Fair Labor Division and asked for the dollar amount of potential restitution and fines currently in dispute that are in DALA's LB open case inventory. The OAG provided us with documentation showing that a total of approximately \$1 million was involved in current cases in DALA, including both restitution that would be paid to the aggrieved employees or individuals and fines that would be due as revenue to the Commonwealth.

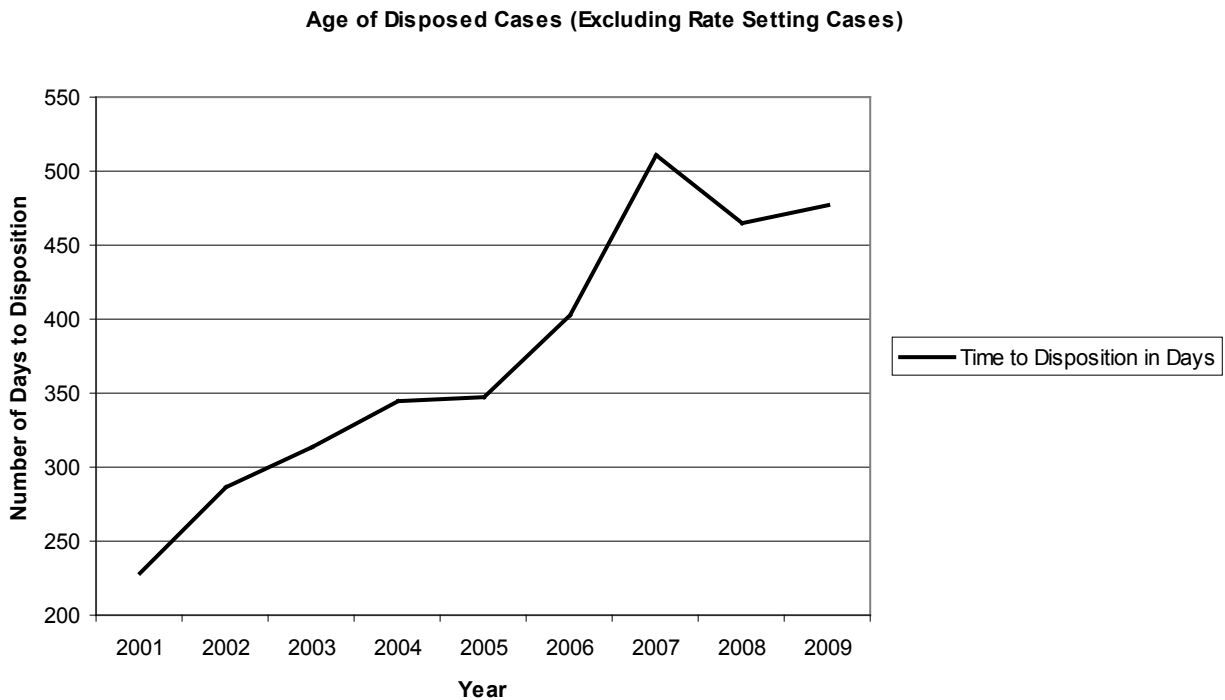
### c. Statistic of "Age of Disposed Cases" Increasing

DALA has not established formal case-management time standard benchmarks, as more fully explained in Audit Result No. 2. However, the National Center for State Courts (NCSC) has identified statistical information that various courts have determined to be an important indicator for case-monitoring purposes. One of these statistics, Age of Disposed Cases, is used as a key indicator for measuring the success of disposing of civil cases promptly. Additionally, other state administrative law organizations have also identified this as an important statistic. This statistic measures overall case timeliness by tracking the amount of time that has transpired from opening the case until disposition (decision, withdrawal, settlement, dismissal).

We analyzed the overall Age of Disposed cases statistic and found that it increased rather steadily until 2006, then increased sharply, as displayed in the following chart.



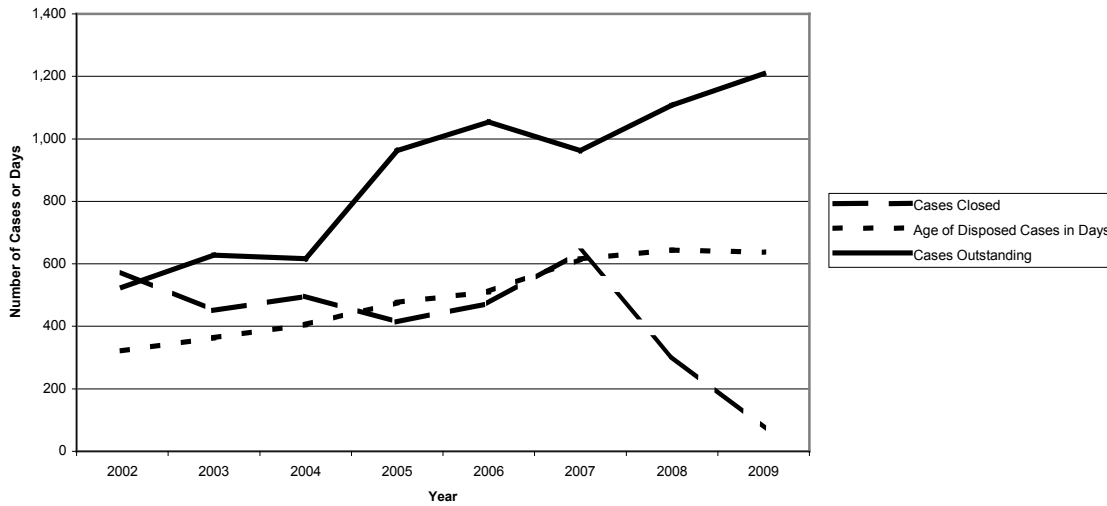
To factor out the effect of the Rate Setting types of cases, we performed a further analysis and found that the statistic Age of Disposed Cases increased from 228 days in calendar year 2001 to 477 days in calendar year 2009, as shown in the following chart.



Although there was a slight drop in the age of disposed cases during 2008, the age increases again during 2009. In any event, it is higher than the pre-2005 level.

We also performed a review of the Age of Disposed Cases for CRAB and LB cases and determined that fewer cases are being closed and that cases are remaining open longer until disposition. For example, a chart of the CRAB cases for the years 2002 to May 31, 2009 follows. This chart tracks the number of cases closed, the age of the disposed cases in days, and the number of open cases for that time period.

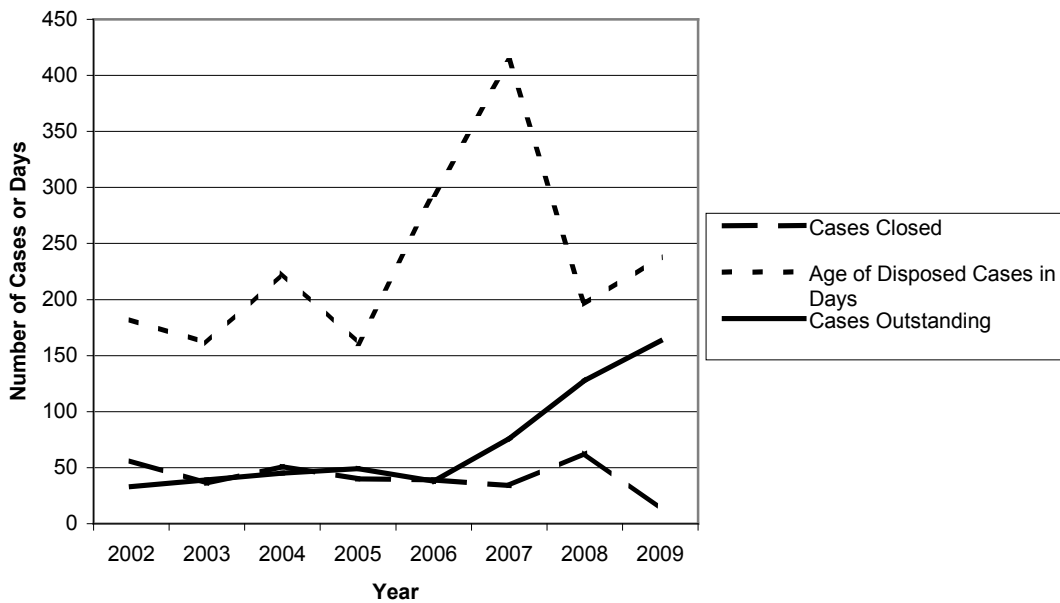
**Contributory Retirement Appeal Board Cases**



Based on the above chart, the number of CRAB cases closed has decreased from a high of 640 cases in 2007 (or 53 cases closed per month) to 75 cases for the first five months of 2009 (or 15 per month). The Age of Disposed Cases has increased from 322 days in 2002 to 637 days in 2009. Understandably, the number of open cases outstanding has increased to 1,224.

A similar analysis of LB cases is shown in the following chart:

**Fair Labor Division Cases**



As shown in the preceding chart, the number of LB cases closed averaged 43 cases per year (or 3.5 cases per month) for the period 2002 through 2007, peaked at 63 cases per year during 2008 (5.25 per month), and has decreased to 13 cases for the first five months of 2009 (or 2.5 cases closed per month). The Age of Disposed Cases averaged 204 days for the period 2002 through 2006, peaked at 413 in 2007 before decreasing to 196 days in 2008, and has increased to 238 days in 2009. The number of open cases outstanding has increased steadily since 2006 to 157 cases.

**d. Preliminary Decisions Written But Delayed during Final Review**

Although we were not provided with a formal policy or procedure for DALA's processing of case decisions, the Chief Administrative Magistrate told us that the verbal policy goal was to have a decision issued within 90 days of the close of the record in the case to correspond to statutory requirements found in DALA's enabling legislation. The Chief Administrative Magistrate also told us that her predecessor had a policy of issuing decisions within 60 days of the close of the record. However, as of August 4, 2009 (while audit fieldwork was in progress), DALA had at least 121 cases where draft decisions were written, but the final decision had not been issued. According to the list DALA provided us, the oldest draft decision was prepared over 1½ years ago (February 11, 2008), well over the 90 days the Chief Administrative Magistrate established as a goal.

It was not possible for us to develop a list of draft decisions that had been prepared according to the Access database system, because that information was not entered into the system. The Chief Administrative Magistrate told us that this omission was intentional, as she viewed the Access system as a public record and believed that such information should not be available for public inquiry. However, even though it was not possible to develop a list of potential draft decisions awaiting processing, we know that the 121 case statistic given us was low, because it did not include cases being handled by the Chief Administrative Magistrate, and we were not provided information to support how many cases the Chief Administrative Magistrate had that were in the draft decision phase.

When asked for written policies and procedures regarding the process with respect to drafting and issuing decisions, the Chief Administrative Magistrate told us that she would provide us a written procedure, but verbally described past practice. However, the Chief Administrative Magistrate never provided the written procedure to us. According to the verbal description, past practice was that a magistrate would prepare a draft decision, send it to the First Assistant Magistrate (or occasionally

Chief Administrative Magistrate) for review, then to a Quality Control team consisting of other magistrates, and finally to the Chief Administrative Magistrate. Current practice was changed to a magistrate preparing the draft, submitting it to review by other magistrates, and then going to either the Chief or First Assistant Magistrate for final review.

The Chief Administrative Magistrate told us that when she took office in 2007, one of her concerns about the operation of DALA was to ensure that decisions were consistent and were based on proper application of the law. Shortly after taking office, she conducted a thorough review of past and pending decisions. When we met in July 2009, the Chief Administrative Magistrate told us that she felt confident about the quality of decisions pending and was preparing to issue several that had been in the draft review process.

Based on our inquiries about the draft decision process, we were told that in the past, the amount of time that would elapse between submitting the draft decision and having a final draft ready for release was a matter of a few days in most cases. DALA officials also told us that the historical rate of DALA rulings that got overturned on further appeal was approximately 15%. That percentage did not seem extremely high to us, indicating that DALA decisions are properly supported by findings of fact and conclusions of law. However, we were unable to find a statistical comparison to indicate what a reasonable percentage of cases is that get overturned on appeal. We did find that the National Center for State Courts addresses the issue of cases being overturned by recommending that courts implement a tracking process for cases that undergo further appeal, tracking what happens to those cases, and identifying the reasons for a case being overturned. That way, after a sufficient amount of overturned case activity is accumulated (200 to 300 cases was suggested, but a smaller amount may be applicable to an administrative law organization because of the smaller number of cases), a court may be able to obtain trend information that a court may use to address potential procedural changes.

#### **e. Decrease in Number of Hearings Held**

There has been a significant decrease in the number of hearings held at DALA over the past few years. According to DALA's supplied information, the average number of hearings conducted per month has decreased from 33 hearings per month in calendar year 2007 to 16 hearings per month during 2009. It was not possible to readily confirm the number of hearings held, since DALA case files do not contain supporting evidence of the hearing being held. Hearings are an important part

of the process of getting a case resolved since, at DALA, the term hearing would generally be similar to a trial in a court proceeding.<sup>2</sup>

To determine the activity level of hearings, we first analyzed the Access database for hearing entries. The result of our analysis returned what appeared to be a low number of hearings based on our previous inquiries regarding the number of hearings. For example, we examined the month of June 2008, during which DALA reported holding 51 hearings. However, the Access database information reflected that only nine hearings were held. We discussed our preliminary results with the Chief Administrative Magistrate, who told us that hearing information should be entered into the Access database, but that she would not be surprised if all hearing entries are not being made. She informed us that DALA relied on a Microsoft Outlook calendar system that she controlled to schedule hearings. We asked for information on the number of hearings scheduled and were provided information on the number of hearings held from January 2006 through May 2009. We test-checked information that DALA provided us to the Outlook calendar information to determine the validity of the number of hearings provided to us.

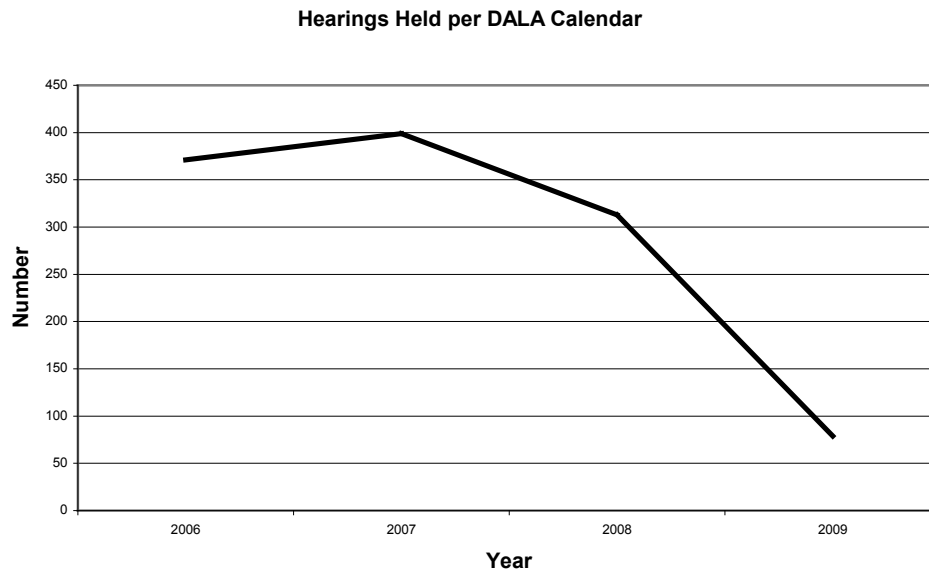
Even though we found that the number of hearings DALA provided to us was supported by the Outlook calendar information, it was not possible to trace the Outlook calendar information to source document case papers, because the Chief Administrative Magistrate believed it improper to have the case papers contain any information relating to hearings. The Chief Administrative Magistrate stated that she did not want case files to contain any notes that may potentially conflict with the official tape-recorded transcript of the hearing.

Using DALA's number of hearings conducted for the period January 2006 through May 2009, we determined that the number of hearings peaked at 399 hearings held during 2007 and decreased during 2008 and 2009. On a monthly basis, hearings went from 33 hearings per month during 2007 to 16 hearings per month during 2009, a significant decrease.

A chart of the hearing activity according to DALA's Outlook calendar information follows:

---

<sup>2</sup> It should be noted that DALA also conducts other hearings, such as a medical professional emergency license suspension hearing.



We discussed the decrease in hearing activity with the Chief Administrative Magistrate, who told us that, as a long-range goal, it would be more efficient to resolve cases without a hearing and try to resolve cases prior to that point. The Chief Administrative Magistrate also mentioned that there are often delays in getting hearings arranged, as one of the parties often has conflicts with a particular hearing date. We agree with the Chief Administrative Magistrate's assertion that it is better to try to resolve a case before it gets to the hearing stage, but we observed no increase in cases closed despite fewer hearings being held. Also, the Chief Administrative Magistrate's assertion regarding scheduling conflicts does not explain why more hearings were previously held.

**f. Open Case Listings May Be Overstated**

DALA records reflect that there are 4,694 open cases as of May 31, 2009. However, this amount may include cases that have since been closed and should not be included on the open case list. We sampled 40 cases from the open case listing and determined that four cases (10% of the sample) are classified as closed according to the case files. If our sample were representative of the population, there could be approximately 469 cases on the outstanding case list that should be reported as closed cases.

We discussed this situation with the Chief Administrative Magistrate, who told us that she believes there may be closed cases on the open case listing. She also informed us that DALA is



currently reviewing the open case listing to update it for any closed cases that may incorrectly be classified as open cases. She believes this situation results from a problem with the Access database's not always picking up the correct closed status, as well as a problem with magistrates' not always updating information to reflect that the case has been closed.

Based on items (a.) through (f.) above, it is evident that DALA needs to address a number of case-management issues. As a result, DALA is not meeting its mission of providing prompt resolution of cases, leading to widespread dissatisfaction with DALA users. According to the Chief Administrative Magistrate, DALA slowed the process of issuing decisions and processing cases to perform an internal review of procedures with the goal of ensuring uniformity and quality decisions. As of July 2009, the Chief Administrative Magistrate noted that DALA was now ready to start issuing a number of case decisions and processing a number of backlogged cases.

### ***Recommendation***

DALA should consider the following in reviewing and implementing procedures for case management.

- Review its procedures for initial processing of cases and make modifications to ensure that acknowledgments are sent out promptly.
- Review open case inventory and prioritize cases for processing to reduce current open case backlog.
- Monitor "Age of Disposed Cases" once the current backlog of cases is reduced to ensure that cases are progressing on a timely basis.
- Conduct a review of cases that have draft decisions written but are in the final review stage before issuance and establish a goal of having a certain number of those cases issued within a certain time frame.
- Review the current process of having the Chief Administrative Magistrate control the hearings calendar and make any changes, if needed, with the goal of having magistrates conduct more hearings and having the hearing information recorded in the Access case-management database. DALA should also consider having documentation maintained in the case papers to support hearings held.
- Complete the current review of open cases, determine which closed cases are incorrectly included in the open case inventory, and make the necessary adjustments to update the status of those cases.

**Auditee's Response (Initial Processing of Cases)**

*The deficiencies noted [with the initial processing of cases] are valid for the period prior to mid-August, 2009 and the comments on the importance of acknowledgements are valid. In mid-August, [the First Administrative Magistrate] was appointed the Acting Chief Administrative Magistrate. Following this appointment, [the Acting Chief Administrative Magistrate] instituted a policy change to require that all appeals be acknowledged upon receipt. Since that time, all new appeals are normally acknowledged within 5 business days of receipt. Rate setting appeals may take longer because they are filed in large batches. Currently we have a backlog of 44 older cases still requiring acknowledgements and our expectation is that these will be completed within the next 30 days. As a back-up to this acknowledgement procedure and in order to ensure that our client agencies are aware of all appeals, [the Acting Chief Administrative Magistrate] appointed a magistrate as agency liaison for each of the major areas of our jurisdiction. One role of the liaison magistrate is to coordinate a status of outstanding cases list with his or her counterpart in the client agency. We believe this has been effective to ensure (1) that the agency and we are in agreement as to the list and status of pending cases; (2) management for both DALA and the client agency are kept informed of the status of pending cases and any potential problems; and (3) that any perceived problems can be dealt with timely and effectively. We believe these procedures will eliminate the problems noted.*

**Auditor's Reply**

Based on its response, DALA has established procedures to rectify initial processing of case concerns. As we recommended, DALA should continue to review procedures for initial processing of cases and ensure that acknowledgments continue to be sent out promptly.

**Auditee's Response (Prioritization of Cases)**

*While we agree that we need to prioritize cases, the size of the open case backlog is not the primary operational consideration. At this point, we have implemented three general priorities for scheduling cases for disposition. Our first priority is to become and stay current with enforcement cases (AG Fair Labor wage and hour, Board of Registration in Medicine, Department of Public Health, as examples). Unless we can give timely hearings of enforcement actions, implementation of enforcement sanctions is delayed and the enforcement programs will become ineffective. Accordingly, the impact of delay is magnified for such cases. We acknowledge that to the extent we are unable to deal with all cases with the resources available to us, this priority choice will negatively affect our ability to address benefit cases (primarily retirement cases). Second, we are trying to identify and schedule accidental disability retirement cases, especially those involving public safety personnel. Generally, these cases are high value and have the most dramatic effect on the financial security of the disabled members. For public safety personnel, delay can also significantly increase the long-term costs for the employing authority. Our third priority involves identifying cases that have common issues and that can be consolidated formally or disposed of on a wholesale basis. The purpose of this last priority is to address the backlog in the most efficient manner possible.*

**Auditor's Reply**

Based on its response, DALA has established prioritization criteria for cases. As we recommended, prioritization should help ensure a reduction in the active case backlog as well as highlighting significant impact cases for timely resolution.

**Auditee's Response (Monitoring "Age of Disposed Cases")**

*Our Open Docket Summary report maintains an average Case Age statistic that probably meets the same operational objectives as the recommendation.*

**Auditor's Reply**

We agree that the "Age of Disposed Cases" was a tool available to DALA administrators in the past. However, based on our inquiries while the audit was in progress, DALA administrators were not using this statistic as a case management tool. Specifically, on June 29, 2009, we submitted a follow-up request for information originally requested on June 2, 2009 including:

*related e-mails or case monitoring correspondence [and] . . . .*

*Any policies, procedures, or internal documents (e.g. memorandums, directives, regulations, e-mails, etc.) to document DALA's case management system. This would include any reports and analysis of case status other than exists in the ACCESS database you have provided us. (emphasis added)*

The Chief Administrative Magistrate told us that DALA did not have any case management statistical reports that it was using for management and administrative purposes.

Therefore, we continue to recommend that DALA implement a monitoring system to manage key statistical data it deems essential. At a minimum, this should include the "Age of Disposed Cases" and should involve using the statistic as part of DALA's management system and not simply as a statistic that is available but not meaningfully used to improve operational efficiency and, ultimately, user satisfaction.

**Auditee's Response (Review of Cases with Draft Decisions)**

*In August and September the Division issued 87 decisions and the magistrates confirmed that all pending decisions had been issued. Based on this, our understanding is that the statement . . . that "as of August 4, 2009 . . . DALA had at least 121 cases where draft decisions were written, but the final decision had not been issued" is inaccurate. . . . All draft decisions pending as of August 4, 2009 have been issued and decisions are being issued within two weeks of final draft on an ongoing basis. The last day of the field work on this audit was August 28, 2009. By that date these actions had been taken and were made known to the audit staff.*

**Auditor's Reply**

As noted in our report, the Chief Administrative Magistrate told us that DALA's case management software does not contain information to track the status of cases from draft to final decision. On June 29, 2009, we submitted a follow-up request for information originally requested on June 2, 2009, including:

*A list of open cases for which magistrates have written decisions that have been submitted for review. Please include, at a minimum, case numbers, date of hearing (if any), date of draft decision, magistrate assigned, and an explanation as to why a final decision has not been issued.*

We were subsequently provided lists indicating only the number of pending draft decisions for the various magistrates, excluding the Chief Administrative Magistrate. The lists were vague with respect to dates of when each list was prepared, but were around the August 2009 period. We arrived at the 121 cases by totaling the lists provided to us by DALA.

We continue to recommend that DALA track and monitor cases through the draft decision process with the goal of issuing more timely decisions.

**Auditee's Response (Scheduling of Hearings)**

*Hearing statistics are back on track. The Acting Chief Administrative Magistrate has appointed experienced magistrates to coordinate the schedule of hearings in each of the major areas of the Division's jurisdiction. Currently cases are being scheduled at a rate consistent with DALA's capacity. In October and November 2009, the first two months of the new scheduling protocol, there were 54 hearings held or an average of 27 per month. On this pace, our annual hearings will approximate 324 per year, a number that compares favorably with prior years' experience. While we believe that the "hearings held" metric is not a good measure of our productivity, a robust hearings schedule is necessary to an effective program for resolving cases. Most cases will be withdrawn or resolved by settlement prior to hearing. With regard to [the second part of the recommendation, that case papers contain documentation to support hearings held] we are not certain what is being suggested. First, all hearings are recorded or transcribed by an official court reporter. The recording and/or hearing transcripts are official parts of the case record and therefore document the hearing fully. If the reference is to a magistrate's personal notes and mental impressions at the hearing, and the suggestion is that such notes be made part of the public record, we respectfully disagree. Such matters are not part of the official record, are privileged, and should not be maintained as part of the case file.*

**Auditor's Reply**

We support DALA's steps to have hearings scheduled more timely. With respect to our recommendation that case papers and the case management system contain documentation to

support the hearings process, DALA acknowledges that summary information of hearings is not maintained in the case management system and that one must therefore rely on other sources (i.e., tape recordings or transcripts) to support hearing activity. We continue to recommend that, to have an effective case management system, summary activity (such as date scheduled, date held, postponement dates, etc.) should be entered into the case management system on a consistent basis. We are not, and have never suggested, that a magistrate's personal notes or documents be made part of the case file.

***Auditee's Response (Review Inventory of Open Cases for Accuracy)***

*The initial review has been completed. Procedures are currently in place to ensure that cases that are resolved are promptly closed. Any additional cases that should be closed will be picked up as cases are reviewed for the hearing schedule.*

***Auditor's Reply***

We recommend that DALA continue to periodically review the open case files to ensure that case activity is correctly indicated.

**2. DALA NEEDS TO ADOPT IMPROVED CASE TIME-MANAGEMENT STANDARDS**

Our audit found that DALA could benefit from adopting more definitive time-management standards for the cases it handles. Although current state law provides rather general time requirements, DALA could benefit from adopting more definitive time standard benchmarks so that everyone knows what is expected of them.

Chapter 7, Section 4H, of the General Laws refers to time periods in two places: a six-month and a 90-day time period. Regarding the six-month time period, Section 4H specifies annual reporting requirements of the Chief Administrative Magistrate and includes a provision that the report shall include "the length of time from receipt of the appeal by the division of administrative law appeals until a written recommended final decision, summary decision, or other interlocutory ruling is issued, including the basis for any case at the division for longer than 6 months." Section 4H further specifies that "It shall be the responsibility of the chief administrative magistrate to verify that written recommended final decisions are issued within 90 days after the record is closed." Although these are important starting points, other judiciary-type organizations have found great success in adopting more definitive standards.

To find an example of successful adoption and implementation of time standards, we can look at the Massachusetts court system. In response to concerns about the court system, the Chief Justice of the Massachusetts Supreme Judicial Court established “The Visiting Committee on Management in the Courts” in August 2002, whose purpose was to review the state of management in the judiciary and make recommendations for improvement. The Committee issued a report in March 2003 that is often referred to as the “Monan Report” in reference to the Chair of the Committee, J. Donald Monan, S.J., Chancellor of Boston College. One of the recommendations made was to “Create a shared vision of success with associated benchmarks,” which involved supporting the court system mission statement with concrete, measurable goals, including time standards. As a result of the Monan Report, the various Departments of the Judiciary established time standards. For example, starting in August 2004, the District Court Department issued case-management procedures and time standard performance goals. The goals were split between whether the case was a civil case (one private party suing another) or criminal case (charges brought by a government law enforcement entity). The time standard goals for civil cases provided for an initial classification of the case based on its expected complexity, provided various time goals from commencement to disposition of the case (e.g., not more than two months, not more than four months, etc.) for the various classes of actions, as well as maximum interval goals between various court events in the process (e.g., time from pretrial conference to trial no more than three months). As a result of these standards being adopted and followed, we found that cases were generally being closed in a more expeditious manner.

Similar to the Massachusetts court system, the State of Georgia made improvements to the Office of State Administrative Hearings (OSAH), which is a counterpart office to the Massachusetts DALA. OSAH was organized in 1995 and got off to a difficult start. In 2000, a new Chief Judge was named as head of OSAH, and the office set about changing to become one of the best-managed administrative courts. Part of its key to success was the development of performance measures.

As a result of not having pertinent, well-defined performance time standard goals, employees are not aware of what is expected of them and can lose sight of the amount of time that has elapsed. Additionally, all the important factors the magistrates consider and research to help resolve cases can further obscure the amount of time that a case has been open. Lastly, without time standards, DALA users are not aware of when they should expect their cases to be resolved.

**Recommendation**

DALA should review guidance available from other sources (e.g., other states' administrative law organizations, Massachusetts Trial Court time standards, and administrative law professional organizations) to determine potential time standards that DALA may want to adopt. Additionally, DALA should receive input from employees and users of DALA services to determine whether the proposed standards will meet employees' and users' expectations.

**Auditee's Response**

*To the extent that the point being made here is that well-defined performance standards for individual magistrates will enhance the magistrates' productivity, the point is well taken. One of the objectives of current management is to develop and implement such standards on a priority basis.*

*Overall time standards such as those adopted by the courts are, however, premature for the Division. We believe that changing the way we process cases can significantly reduce the time a magistrate must spend on a case to decide it and will significantly impact the determination of appropriate time standards. These changes include:*

- *Initial screening to identify cases for which there is likely no genuine issue of any material fact and disposing of such cases on summary disposition prior to hearing;*
- *Implementation of pre-hearing procedures designed to enable and require the parties to streamline the factual and legal issues to be decided at trial;*
- *Implementation of post-hearing procedures requiring the parties to draft proposed findings and rulings and submit them in electronic form such that they can be used in drafting the decisions;*
- *Adoption of performance criteria for magistrates to ensure they are being fully engaged and focused.*

*Until we have fully implemented these initiatives and determined their effect on our case backlog, we do not believe we can determine appropriate standards or devote our scarce resources on their implementation.*

**Auditor's Reply**

Development, implementation, and monitoring of time standards for cases both at key points of the case as well as overall time frames has been found to be effective for both the Massachusetts courts and the other administrative law organization cited in our report. Part of the Massachusetts court system procedures for handling cases includes an initial review for determining the potential complexity of the case and assigning it an appropriate category for estimated time of disposition. DALA's plan to develop initial case screening as well as pre-hearing and post-hearing procedures

should help cut down the amount of time it takes to resolve cases. However, we continue to recommend that case time management standards be adopted and monitored as soon as possible to aid in the efficient processing of cases.

### **3. IMPROVEMENTS NEEDED IN MAINTENANCE OF CASE STATISTICAL INFORMATION**

Our previous Audit Result recommended that DALA adopt more definitive case-management time standards. If DALA does implement our recommendations, the next logical part of the process to be considered would be a system capable of monitoring the status of cases to measure whether the time standards are being met. Based on our review of DALA's current case-management system, DALA will probably need to either make changes to the current system or implement another system. It will also have to monitor the system to identify any backlogs and implement corrective action.

DALA currently uses a specialized case-management system developed by a contractor at DALA's request. The case tracking system utilizes an Access-based software package, was placed in production on March 3, 2000, and contains case information from calendar year 2000 to the present. The system is based on running a number of queries to obtain information such as cases received, schedules by magistrate, open cases, and closed cases.

As part of our audit work, we requested the raw data table from DALA on which we could perform audit analysis. Part of the information DALA provided to us was a copy of its case-management program. Although we used ACL data software to develop most of our conclusions (as explained in the Audit Scope, Objectives and Methodology section of this report), we were able to run various reports from our copy of the DALA program. However, one important reporting option of the DALA program -- time between case events -- was only partially operational. According to DALA administrators, this function does not work for certain queries for data more than two or three years old. Use of this function would provide an important managerial tool to measure key statistical information (e.g., time from conference to hearing, time from hearing to decision, etc.).

While conducting our audit work on the Access system, we noted that information regarding hearings is not always entered into the system. The Chief Administrative Magistrate told us that because of the limitations of the Access system, hearings are scheduled on a separate Microsoft



Outlook calendar and that information is not always updated to the Access database, although it is supposed to be.

We asked the Chief Administrative Magistrate about the problems with the Access database system and whether any other systems, specifically the system the Trial Court of the Commonwealth uses, were considered for implementation. She told us that DALA did look at changes with the goal of acquiring a system that would include current case docket information, but also include a case-scheduling component. The current Access system would be difficult to modify to include case scheduling, so DALA also explored other possibilities. Two other systems considered were the Trial Court's MassCourts system, which was found to be prohibitively expensive. Another system considered was the Trial Court's Forecourt system, which was less expensive than the MassCourts system; but funding for this modification was unavailable during the current fiscal year.

### ***Recommendation***

DALA should:

- Continue to identify what its future case-management system needs are, keeping our recommendations in mind regarding the identification and monitoring of certain benchmark activities.
- Continue to explore potential case-management software available, including examining what other states' administrative law organizations use for their software, so that DALA will be ready to make a change when additional funding becomes available.
- When using the current Access system, record entries to reflect "hearing" activity so that the Access system provides a complete summary of the case activity.

### ***Auditee's Response***

*This comment is noted. We believe the current system can generate the statistical basis for an adequate understanding of the Division's performance for management purposes. We do not believe that the audit has established that, for an agency the size of the Division, with the number of magistrates and the number of cases processed each year, a sophisticated time management software package as suggested would be cost effective or give better information than we currently have. Current management has a good understanding of where the productivity weaknesses are and has already resolved those identified in the audit.*

### ***Auditor's Reply***

Audit Results No. 2 and No. 3 are related in that the Audit Result No. 2 suggested adopting key statistical information to monitor, and Audit Result No. 3 suggested that case management software

be implemented that could track such information. We understand that case management software could be expensive and agree that some software available might be too extensive and expensive for an organization the size of DALA. That is why we recommended that DALA make inquiries to see what other systems are available, what other state's administrative law organizations use, and the costs of those systems. If DALA believes that the current system will be able to track the information it considers necessary to exercise management control, then the current system may be sufficient. However, at the time our audit fieldwork was being conducted, DALA management was unable to provide us information to show that they were either monitoring statistical information or using such information as a management tool for monitoring case activity and making necessary management adjustments.

#### **4. NEED TO COMPLY WITH STATUTORY REPORTING REQUIREMENTS**

In accordance with state law, DALA is required to file an annual report with legislative oversight entities. However, the Chief Administrative Magistrate told us that she has not filed this report since she took office in 2007.

Chapter 205 of the Acts of 2006 amended DALA's enabling legislation, found in Chapter 7, Section 4H, of the General Laws, and added the following reporting requirement:

*The division of administrative law appeals shall prepare annually a report concerning all appeals filed with the division during the preceding calendar year. It shall be the responsibility of the chief administrative magistrate to cause a statistical list to be maintained of all matters assigned to each administrative magistrate as relating to any appeals required by law. The report shall contain, at a minimum, the following information: the number of new appeals filed and received; the names of all parties to each appeal; the type of each appeal; the date of submission and of disposition of the appeal; its disposition, whether by decision, withdrawal, settlement or dismissal, the number of appeals currently pending, the total number of simplified hearings; and the length of time from receipt of the appeal by the division of administrative law appeals until a written recommended final decision, summary decision, or other interlocutory ruling is issued, including the basis for any case at the division for longer than 6 months. Each calendar year the original of the report shall be submitted to the office of the house and senate clerk and to the house and senate committee on ways and means as well as to the director of the Massachusetts permit regulatory office in section 3H of chapter 23A.*

Additionally, given the current public expectation of increased accountability and transparency, many government entities often provide more detailed reporting to show how taxpayer resources are being used.

When asked why the annual reports were not filed the Chief Administrative Magistrate stated that she wasn't familiar with the requirement and was not sure whether these reports were filed by her predecessor.

As a result of its not preparing and filing the required reports, DALA is not in compliance with current state law. Additionally, because of some of the information that is required to be reported on, both the executive and legislative branches of government are unaware of the current status of cases being handled by DALA. Lastly, users of DALA do not know what to expect of the timeframes for handling their cases.

### ***Recommendation***

DALA should improve its internal control over compliance with state law, including implementing the required reporting requirement. Additionally, DALA should consider more comprehensive public reporting to meet the public's expectations of accountability and transparency.

### ***Auditee's Response***

*This issue has been resolved. On September 16, 2009, current management filed its 2008 Report to the General Court pursuant to G.L. c. 7, sec. 4H. This was the first such report ever filed in the Division's history. The report presents the information required by G.L. c. 7, sec. 4H, describes the historical performance of the Agency to explain the etiology of the current backlog and describes some of the initiatives contemplated by management to better manage our case flow. A copy of this report was submitted to the audit staff prior to the completion of the fieldwork. We do not expect any problems updating the report on an annual basis to meet the reporting requirement of Chapter 7.*

## **5. SERVICE DELIVERY COULD BE IMPROVED BY IMPLEMENTING SATISFACTION SURVEYS**

DALA has not had a user feedback process in place since it did away with user satisfaction surveys. Although such surveys are not explicitly required by state law or regulation, we found that other state administrative law organizations do have user satisfaction surveys as part of their feedback monitoring system. Additionally, since DALA's mission by state law is to provide timely, unbiased responses to cases, user satisfaction surveys would be an important third-party mechanism to monitor how users rate their experience with DALA. Lastly, since DALA does not have user satisfaction surveys, we did a telephone survey of various users and found that users identified a number of administrative issues that have surfaced, supporting the case-management problems we reported in Audit Result No. 1.

Criteria for implementing a user satisfaction feedback system can be found from a variety of sources, including other state's administrative law organizations, the Office of the State Comptroller (OSC), and DALA's enabling legislation. The State of Georgia had experienced problems with its administrative law appeal organization since it was founded in 1995. In 2000, it set about making changes to improve the organization. One of the steps it credits with being instrumental in its turnaround is: "Identify all of your customers, learn what they need and want, and maintain frequent contacts." As part of this process, it implemented an on-line user satisfaction survey to provide feedback and see what was and was not working at its administrative law organization.

On a more local level, the OSC also provides internal control guidance for state agencies and departments. The most recent document was issued on September 13, 2007, and updated the guidance that had previously been issued. One of the elements a state agency should implement for internal control is monitoring. This guidance notes that monitoring can take on different forms and will vary by the level of the agency involved (e.g., supervisory, front line personnel, etc.). The goal of monitoring is to ensure that the agency is achieving its mission, goals, and objectives. Specifically, the OSC's guidance for internal controls with respect to monitoring states, in part:

*Monitoring is the review of an organization's activities and transactions to assess the quality of performance over time and to determine whether internal controls are effective. Management should focus monitoring efforts on achievement of the organization's mission, goals and objectives. For example, management must consider whether internal controls are operating as intended and if they are appropriately modified when conditions change. The purpose of monitoring is to determine whether internal control is adequately designed, properly executed, and effective. Internal control is adequately designed and properly executed if all ERM [Enterprise Risk Management] components are present and functioning as designed.*

*In considering the extent to which the continued effectiveness of internal control is monitored, both ongoing monitoring activities and separate evaluations of the internal control structure should be considered. Ongoing monitoring occurs during normal operations and includes regular management and supervisory activities, comparisons, reconciliations, and other actions people take in performance of their duties. It includes ensuring that managers and supervisors know their responsibilities for internal control and the need to make control monitoring part of their regular operating processes. Separate evaluations are a way to take a fresh look at internal control by focusing directly on the control's effectiveness at a specific time. These evaluations may take the form of self-assessments as well as review of control design and direct testing, and may include the use of checklists.*

*For monitoring to be most effective, all employees need to understand the organization's mission, goals, objectives, risk levels and their own responsibilities. Everyone within an organization has some responsibility for monitoring. The position a person holds in the organization helps to determine the focus and extent of these responsibilities. Therefore, the monitoring performed by managers, supervisors and staff will not have the same focus.*

Lastly, DALA's enabling legislation, Chapter 7, Section 4H, of the General Laws, provides a key part of DALA's mission statement, noting that at DALA, "It shall be the responsibility of said chief administrative magistrate to organize his division to provide speedy and fair disposition of all appeals and to establish policies that will encourage and aid parties in limiting and consolidating issues and pleadings to the superior court." Monitoring through satisfaction surveys helps provide feedback as to whether users of DALA agree or disagree regarding speedy and fair disposition of their cases.

DALA used to have a user satisfaction survey as part of its website. We asked the Chief Administrative Magistrate about the change in the website and were told that it was modified to provide a more uniform structure as part of a bigger modification affecting all agencies under the Executive Office for Administration and Finance. The Chief Administrative Magistrate also indicated that old website postings on prior decisions were modified to include more recent decisions because of problems with bandwidth capabilities, which have recently been resolved.

As part of our audit process, we obtained independent third-party evidence by conducting a survey with certain DALA users to obtain their feedback and to verify whether the results of our data analysis of DALA's case statistics was in line with what DALA users observed. Based on our survey, we noted an overall level of dissatisfaction with DALA's handling of cases. The results of the survey also supported our conclusions regarding case activity, which are discussed in more detail in other sections of this report. We should also note that most parties were reluctant to provide specific information to us, since they have cases pending at DALA and do not want to jeopardize the status of their cases. However, parties who did talk to us had a familiar theme among their comments. For example, they had high regard for the magistrates that heard their cases and thought that the magistrates were very committed, knowledgeable regarding administrative law procedures, and generally seemed to have a legal basis on the points of law on which the case was being heard. However, most parties also identified that in the past two years, a number of administrative issues have surfaced (confirming information we developed while conducting our analysis of case activity) and responded with comments such as:

- Parties are unable to receive a timely acknowledgment that their case was filed with DALA (see our Audit Result No. 1a).

- Routine cases where a party fails to show for a hearing should result in a dismissal and issuance of a default decision, but no decision is issued (see Audit Result No. 1b).
- Cases have been heard, but formal decisions are not rendered for extremely long periods of time (see Audit Result No. 1d).
- There has been a decline in the number of case hearings being conducted (see Audit Result No. 1e).

If DALA had an internal user survey monitoring system, some of these problems would come to light earlier and be documented so that DALA administration could use the identified problems as a learning opportunity and implement corrective action in a timely manner.

### **Recommendation**

DALA should implement a user survey system to provide for timely feedback from DALA users and provide, in part, an external monitoring function. DALA should also consider establishing periodic meetings with key users, (such as state agencies, the Massachusetts Association of Public Pension Attorneys, and the Massachusetts Bar Association) to help ensure adequate feedback and to assist in establishing best practices for all users.

### **Auditee's Response**

*We believe [alternative approaches are] more effective than random "satisfaction surveys." One of the first actions taken by new management was to assign an experienced magistrate to each of our principal areas of jurisdiction with responsibility (a) for scheduling and assignments in the particular area; and (b) for acting as the "customer liaison" with the client agencies. It is the responsibility of this magistrate to ensure that we and the client agency are aware of and agree on the current status of each case in the particular area and to resolve any problems that arise. The customer feedback we have received with regard to this arrangement has been extremely positive. With regard to retirement cases, we have reestablished our relationship with the Massachusetts Association of Contributory Retirement Systems, the non-profit organization the members of which are the board members and staff of all Chapter 32 public employee retirement systems, and regularly participate in the Association's twice-yearly educational conferences. These conferences are attended not only by the retirement board members and staff, but also by their counsel and counsel for the members. [The Interim Chief Administrative Magistrate] has also been asked to organize and manage a two-day educational program for retirement board members and staff similar to that he has developed in the past. In our judgment these initiatives are the most effective vehicles for obtaining feedback on how we are performing and how we can improve performance on retirement cases. They are also effective vehicles for educating our client agencies and party counsel on how they can assist us to process cases more efficiently and effectively.*

***Auditor's Reply***

We reiterate that administrative law organizations that were experiencing operational challenges in other states found it helpful to establish on-line user satisfaction surveys to identify user's expectations, implement appropriate management changes, use the survey information to determine how the changes are impacting users, and make additional changes, if warranted.

One of the key aspects of the on-line satisfaction surveys is that information can be an important monitoring tool, as feedback information can be submitted without the need to specifically identify the user submitting the survey information. Whereas this leads to the potential for more negative comments if a user cannot be identified, it puts users more at ease to honestly provide feedback about their experience. In fact, our telephone survey revealed that some parties were either reluctant to talk to us because they did not want to jeopardize their case being handled by DALA or did not return our telephone calls, possibly for the same reason, even though we were independent from DALA control.

Action taken to date, according to DALA's response, indicates that DALA is obtaining input from client agencies, particularly with respect to retirement cases. Whereas this information and relationship is important, DALA should not overlook obtaining information from the ultimate users of DALA, the individuals who feel the largest impact of their treatment by DALA, be they retirees, nurse's aides, patients, doctors, laborers, or any of the wide array of individuals impacted by having a case handled by DALA.

**6. DALA SHOULD CONSIDER HOLDING HEARINGS AT ALTERNATIVE SITES TO ACCOMMODATE USERS WITH DISABILITIES AND HARDSHIPS**

As part of its long-range planning, DALA should consider the needs of users with disabilities and hardships and conduct a study to determine whether there is a sufficient need for DALA to start holding hearings at various locations throughout the state. Although DALA is located close to public transportation, some of DALA's users have medical conditions that make it difficult to travel to DALA to attend a hearing. Also, users located a long way away from the Boston office of DALA incur additional transportation and legal expenses for attending hearings.

Certain other states' administrative law organizations hold "circuit sessions" throughout the state as an accommodation to their users. Additionally, certain Massachusetts courts do the same. For

example, the Massachusetts Juvenile Court Department has a main division in each county of the Commonwealth. Additionally, representatives of each division travel to various locations within that county during the month to conduct court business.

In the process of conducting our review of users of DALA services, certain users noted that getting to the Boston location can be a physical and financial obstacle to attending a DALA hearing.

***Recommendation***

DALA should conduct a review to determine the potential need for, as well as the costs and benefits of, holding hearings at various locations throughout the state. DALA should also determine the potential number of sites where the greatest number of hearings could be held as well as the frequency of those hearings. Lastly, DALA should determine whether remote hearings would be a beneficial service to offer or whether such service would be too costly to implement.

***Auditee's Response***

*We agree with this concept but believe the considerations should be broader than only to accommodate disabilities and hardships. Currently we have absolutely no funds to support off-site hearings. We do hold hearings off-site where appropriate to accommodate parties' needs and where we can do so without additional out-of-pocket costs. For parties outside the local area, we permit participation in pre-hearing conferences by teleconference. We are currently in discussions with one of our agency clients on ways it can provide funding to pay for alternative venues for hearings where doing so can either accommodate disabilities or hardships or minimize the costs to the parties, including the agency. In the future, if funding permits, the most appropriate venue for hearings will be one of the matters addressed in pre-hearing conferences.*

***Auditor's Reply***

We understand that holding off-site hearings could involve the need for additional funding that DALA may not have at the present time. Therefore, our recommendation is meant for long-term planning. Our recommendation that DALA conduct a review to determine the potential need for as well as the costs and benefits of holding hearings at various locations throughout the state would be the first step in determining whether there is a need for such services and the related expenditures needed to undertake such a program.



## **7. IMPROVEMENTS NEEDED IN DEVELOPING AN INTERNAL CONTROL PLAN AND CONDUCTING PERIODIC RISK ASSESSMENTS**

Our audit found that DALA has not conducted a risk assessment or developed an internal control plan as required by state law and the OSC. As a result, DALA's efforts to ensure the integrity of its records and assets are diminished.

Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, states, in part:

*Internal control systems for the various state agencies and departments of the commonwealth shall be developed in accordance with internal control guidelines established by the Office of the Comptroller.*

Subsequent to the passage of Chapter 647, the OSC issued written guidance in the form of the Internal Control Guide for Managers and the Internal Control Guide for Departments. The OSC's most recent Internal Control Guide<sup>3</sup> continues to stress the importance of internal controls and the need for departments to develop an internal control plan, defined as follows:

*A high-level department-wide summarization of the department's risks and the controls used to mitigate those risks. This high level summary must be supported by lower level detail, i.e., department policies and procedures.*

Also, the new OSC Internal Control Guide continues to put emphasis on a department-wide risk assessment, which is defined as "the identification and analysis of the risks that could prevent the department from attaining its goals and objectives." For this reason, the risk assessment is an integral part of an internal control plan because it assists management in prioritizing those activities where controls are most needed. To comply with Chapter 647, management is responsible for evaluating and implementing, at least annually, any changes necessary to promote efficiency; reducing the risk of asset loss; helping to ensure the reliability of financial activity and compliance with laws and regulations; and maintaining the integrity and effectiveness of the internal control system.

The Chief Administrative Magistrate informed us that DALA did not conduct a risk assessment and develop an internal control plan, since it was focusing its attention on reviewing case-management

---

<sup>3</sup> The OSC issued its seventh edition of its Internal Control Guide on September 13, 2007 that streamlines the contents of existing manuals and incorporates the principles of Enterprise Risk Management (ERM) that tie risk to strategic planning. Accordingly, the new guide replaced both the *Internal Control Guide for Managers, Volume I*, and *Internal Control Guide for Departments, Volume II*.

operations to ensure that decisions were consistent and based on strong legal points. However, DALA administrators indicated that they were aware of the need to address risk assessments and internal controls and that they planned to do so in the near future.

### ***Recommendation***

DALA management should review the OSC's Internal Control Guide, conduct a risk assessment, and develop and document its internal control plan to address the risks and internal control requirements specific to all fiscal, administrative, and program operations. Additionally, DALA should ensure that a risk assessment is conducted at least annually and that its internal control plan is updated based on the results of the risk assessment, as necessary. As a final point, the internal control plan is an important communication vehicle that management should use to raise awareness of as well as underscore management's commitment to integrity. For this reason, DALA administrators should ensure that integrity and ethical values expected of management and staff are well documented in its plan and made available to all DALA personnel.

### ***Auditee's Response***

*Because the Division is so small, the functions that are subject to the policies and procedures referred to in this section are managed and provided for the most part at the Secretariat level. The Division does receive and deposit checks occasionally, and the Division does have standard procedures in place to ensure that the checks are handled properly. All other functions, including financial management and procurement, are either provided by or subject to the direction of Secretariat personnel. We believe the issues raised in the report are adequately addressed at the Secretariat level.*

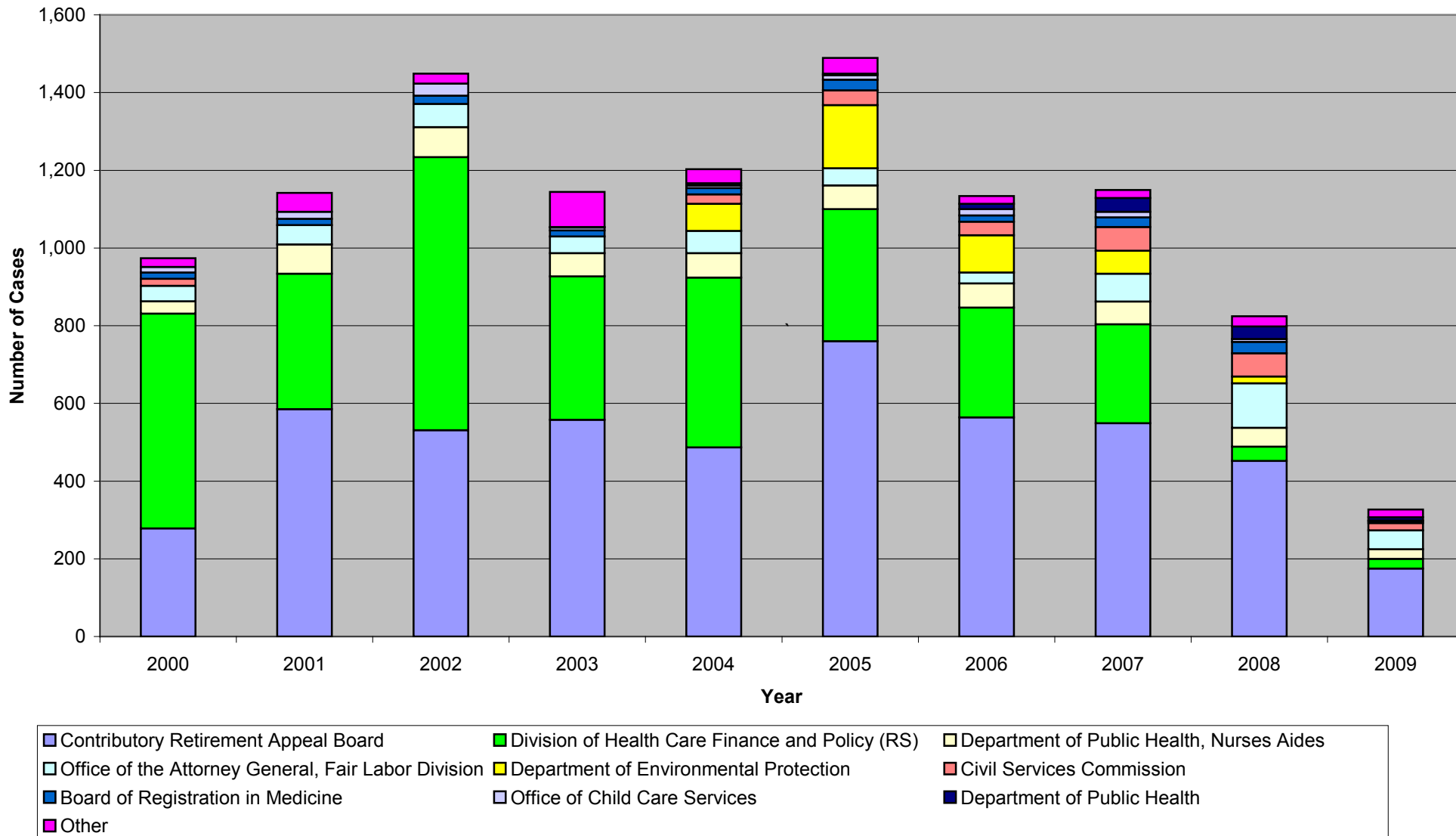
### ***Auditor's Reply***

The belief that risk assessment and internal controls apply only to financial operations is common at many organizations. However, guidance from the OSC and other organizations responsible for promulgating internal control guidance recommends that an entity assess organizational risks that might hinder or prevent it from accomplishing its mission and achieving its goals and objectives. The entity should then ensure that internal controls address those identified risks. Risks vary from entity to entity and can involve many areas. The need to maintain accreditation for a school, control over cash at a bank, or security for a prison are all significant risk factors for the operating environment for each particular entity. Addressing financial risks and internal controls is common at most entities, since they usually have a significant impact on operations. However, risk assessment and internal controls need not be centered on financial activities at every entity.

Accordingly, we again recommend that DALA management review the OSC's Internal Control Guide, conduct a risk assessment, and develop and document its internal control plan to address the risks and internal control requirements specific to all fiscal, administrative, and programmatic operations.

### APPENDIX I

**New Appeals Received and Opened by Type of Case by Year, January 1, 2000 to May 31, 2009**



### APPENDIX II

#### Days Elapsed Between Receipt of New Appeal and Submission of Acknowledgement

