

State of Colorado
Office of the State Auditor

Performance Audit of the Office of
Administrative Courts

September 2012



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September 13, 2012

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Office of Administrative Courts in the Department of Personnel & Administration. The audit was conducted pursuant to the Workers' Compensation Act [Section 8-47-101(3)(d)(II), C.R.S.], which requires the Office of the State Auditor to conduct a performance review of the administrative law judges who hear workers' compensation cases. The Office of the State Auditor contracted with Sjoberg Evashenk Consulting, Inc., to conduct this audit. The report presents our findings, conclusions, and recommendations, and the responses of the Office of Administrative Courts.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marianne P. Evashenk", is written over a faint, larger version of the signature.

Marianne P. Evashenk
President

THE EQUATION FOR EXCELLENCE

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Glossary of Terms and Abbreviations

ALJ – Administrative Law Judge

COFRS – Colorado Financial Reporting System

Office – Office of Administrative Courts

DOWC – Division of Workers' Compensation

FTE – Full Time Equivalent

Legacy System – The Division of Workers' Compensation Claims System established on the State's General Government Computing Center mainframe

ICAP – Industrial Claim Appeals Panel

Pro Se – “On one's own behalf,” or a party representing oneself

PTR – Petition to Review (or “appeal”)

September 2012

Department of Personnel & Administration

Report Highlights

PURPOSE

To evaluate the Office of Administrative Courts’ (the Office) performance with respect to workers’ compensation hearings.

BACKGROUND

- The Office is responsible for administratively resolving workers’ compensation disputes between injured employees and employers.
- In Fiscal Year 2012, the Office held more than 1,800 workers’ compensation hearings.
- Workers’ compensation cases comprise approximately 59 percent of the Office’s workload; the remaining 41 percent is made up of cases relating to 50 additional state agencies, boards, and other entities.
- In Fiscal Year 2012, the Office was appropriated \$4.5 million in revenue and 40 full-time equivalent employees, including 19 Administrative Law Judges.

OUR RECOMMENDATIONS

The Office should:

- Improve hearing and decision timeliness by expanding the number of days available for scheduling hearings, encouraging the use of summary orders, and monitoring backlogs in issuing decisions.
- Work collaboratively with stakeholders regarding information system upgrades, and ensure the upgrades address data reporting needs of the Office and its stakeholders.
- Strengthen customer service by streamlining the presentation of informational resources, improving access to case information, and proactively engaging parties less likely to be familiar with the hearing process.

The Office agreed with all of these recommendations.

AUDIT CONCERN

The Office of Administrative Courts does not consistently schedule hearings or issue decisions within the timeframes mandated by statute. Further, the Office can increase efficiencies and enhance customer service by implementing technology improvements, and more clearly presenting informational resources.

KEY FACTS AND FINDINGS

- In Fiscal Year 2012, the rate at which decisions issued by Administrative Law Judges were reversed or remanded by the Industrial Claim Appeals Panel or the Colorado Court of Appeals remained near 12 percent, its lowest level in a decade.
- While the Office has improved the timeliness of its workers’ compensation hearing process, the Office did not consistently schedule hearings or issue decisions within timeframes mandated by statute.
 - Of the 682 cases tested, each of which began and ended in Fiscal Year 2012, we identified 210 hearings (30 percent) and 118 decisions (17 percent) that exceeded statutory timeframes.
- The Office’s case management system, Legal Files, does not record necessary case information in a format that facilitates the needs of management or the Division of Workers’ Compensation, impacting the ability of both to provide sufficient management oversight.
- Parties appearing before Administrative Law Judges were generally satisfied with the Office’s services, particularly with respect to the professionalism and knowledge of staff and judges, as well as with the quality of communication with the Office. Yet, parties identified three key areas where the Office could enhance customer service:
 - Improving the presentation of informational resources, including its website.
 - Incorporating additional technological resources to improve access to case information, such as online filing and internet access in courtrooms.
 - Increased customer assistance, particularly for parties less likely to be familiar with the hearing process.

For further information about this report, contact the Office of the State Auditor 303.869.2800 – www.state.co.us/auditor

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RECOMMENDATION LOCATOR
Agency Addressed: Office of Administrative Courts

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
1	25	Ensure that workers' compensation cases comply with statutory timeliness requirements by: (a) opening additional scheduling opportunities for the Office's trailing docket; (b) allowing parties to schedule hearings on the trailing docket on any day in which there is an opening, rather than requiring parties to wait a minimum of 80 days; (c) ensuring that extensions and continuances are accurately recorded in Legal Files; (d) continuing to encourage Administrative Law Judges (ALJs) to use summary orders; (e) considering the number of late decisions issued by an ALJ when evaluating performance; (f) accounting for ALJs' outstanding workload when assigning hearings; and (g) using Legal Files to track and monitor timeliness with respect to statutory requirements.	Agree	a. October 2012 b. October 2012 c. October 2012 d. Implemented e. Implemented f. Implemented g. Implemented
2	31	Improve the functionality of the Legal Files case management system by: (a) continuing to work collaboratively with the Governor's Office of Information Technology and all stakeholder agencies during the development and implementation of planned system upgrades; (b) ensuring that the new contract with Legal Files Software, Inc., reflects all elements needed to improve the functionality of the system; (c) developing enhanced system reports that will allow management to regularly monitor compliance with mandated timeframes; (d) enhancing efficiencies between the Office and the Division of Workers' Compensation (DOWC) by developing data extractions from Legal Files that can be uploaded into DOWC's legacy system; and (e) determining the cost-benefit of programming the Legal Files system to automatically populate fields and reduce duplicate data entry.	Agree	a. December 2012 b. December 2012 c. Implemented d. June 2013 e. June 2013
3	38	Strengthen customer service by: (a) streamlining the presentation of information made available to the public, including developing streaming videos geared toward <i>pro se</i> claimants depicting what they can expect during the hearing process, and correcting broken links and formatting deficiencies on the Office's website; (b) implementing technological improvements that would allow parties to file applications, motions, and other case-related documents online, and that would enhance access to case information in courtrooms; and (c) instituting a process to proactively engage parties less likely to be familiar with the hearing process, particularly <i>pro se</i> parties, in order to better inform them of the hearing process and the Office's rules and procedures.	Agree	a. June 2013 b. June 2013 c. June 2013

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Overview of the Office of Administrative Courts

Chapter 1

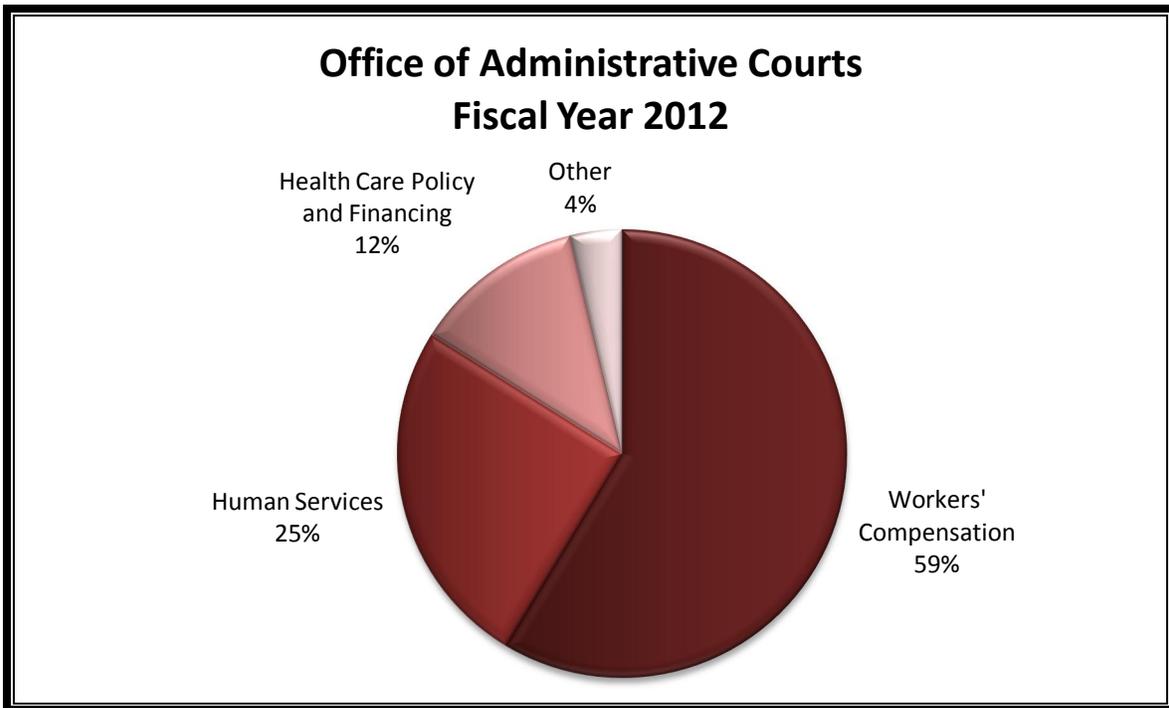
Colorado's workers' compensation laws provide for certain remedies for individuals injured on the job. These remedies include benefits paid for by employers, or their insurance companies, which can range from temporary to permanent disability benefits, including weekly payments to compensate for lost wages; permanent impairment settlements, which can reach up to \$150,000 depending on the severity of the impairment; compensation for permanent disfigurements, such as scars; vocational rehabilitation and retraining; compensation for past and future medical benefits; as well as penalties and interest owed if an insurance company fails to handle a workers' compensation case correctly and in a timely manner.

However, disputes may arise as to whether an injury is compensable, the amount of compensation, the type of disability, or other related issues. In Colorado, workers' compensation disputes arising between injured employees and employers are resolved through the administrative hearing process at the Office of Administrative Courts. The resolution of disputes through an administrative hearing process enables both employers and employees to resolve disputes while avoiding the time and expense of litigation in district court.

Office of Administrative Courts

The Colorado Office of Administrative Courts (the Office), formerly the Division of Administrative Hearings, was statutorily created in 1976 and is located within the Department of Personnel & Administration [Section 24-30-1001(1), C.R.S.]. The Office was created to provide an accessible, independent, and cost-effective process to hear and resolve disputes related to government agencies' statutes, rules, and regulations, including those that govern eligibility determinations for public benefits. The Office adjudicates hearings for more than 50 state agencies, boards, and other entities, including the Departments of Health Care Policy and Financing, Human Services, Regulatory Agencies, and the Division of Workers' Compensation (DOWC), located within the Department of Labor and Employment. The following chart shows the distribution of the approximately 2,400 cases heard by the Office by client agency for Fiscal Year 2012.

Figure 1: Distribution of Caseload by Client Agencies



Source: Sjoberg Evashenk Consulting's analysis of Office of Administrative Courts' data.

Note: "Other" includes cases from the Departments of Regulatory Agencies, Education, Corrections, Personnel & Administration, Revenue, and State.

As the chart shows, workers' compensation cases comprised the majority (59 percent) of the Office's caseload in Fiscal Year 2012.

The Office's administrative headquarters and most of its courtrooms are located in Denver. Section 24-30-1001(2), C.R.S., requires the Office to provide access to administrative hearing services statewide, in the Denver, southern, and western regions of the state. Consequently, the Office established two additional regional offices in Grand Junction and Colorado Springs. Together, ALJs administer hearings in each of these three locations and, on a periodic basis, travel to additional satellite locations in Greeley, Pueblo, Alamosa, Glenwood Springs, and Durango, to broaden the scope of regional services offered by the Office. The Office employs a Director and a staff of 19 Administrative Law Judges (ALJs); the Director and 16 ALJs are located in the Denver office, two ALJs are located in the Colorado Springs office, and one ALJ is located in the Grand Junction office. All of the ALJs preside over hearings similar to court trials, including testimony provided by witnesses and the submission of documents, all of which are governed by rules of procedure. By statute, ALJs must meet the same qualifications as district court judges in Colorado [Section 24-30-1003(2), C.R.S.].

In order to manage its caseload, the Office categorizes cases as either:

- **Workers' Compensation**, which includes all workers' compensation disputes, such as issues of compensability for injuries that occurred on the job, or

- **General Services**, which includes all non-workers' compensation cases, such as those involving disputes over public assistance benefits provided through the Departments of Human Services or Health Care Policy and Financing, and state licensing activities conducted by the Department of Regulatory Agencies.

While the three ALJs in the regional offices primarily hear workers' compensation cases, they occasionally also hear general services cases. The 16 ALJs in the Denver office are typically assigned to hear either workers' compensation cases or general services cases. However, some of the Denver ALJs are assigned to hear both types of cases. In addition, the ALJs in all three offices are responsible for providing alternate dispute resolution services, which are designed to assist parties for all case types by resolving disputes through mediation, handling procedural hearings, and processing motions.

In addition to the Director and the ALJs, the Office was also appropriated 20 full-time equivalent (FTE) administrative positions, which handle docketing, customer service, and other administrative functions in support of the ALJs. This audit focuses on the performance of the Office with respect to workers' compensation cases and the ALJs assigned to hear these cases.

Fiscal Overview

In Fiscal Year 2012, the Office received approximately \$4.5 million in revenue, had expenditures of about \$4.6 million, and was appropriated 40 FTE. As the following table shows, over the past five fiscal years, the Office's revenue and expenditures have increased by 10 and 15 percent, respectively.

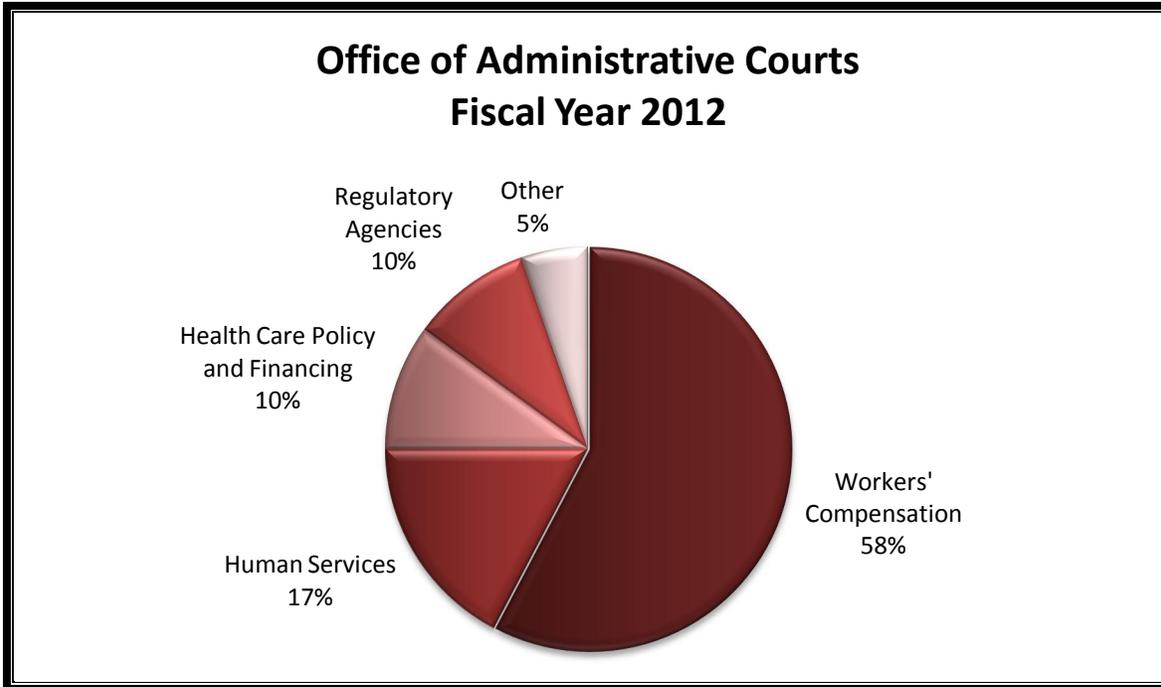
Table 1: Revenue, Expenditures, and FTE Appropriation

Office of Administrative Courts Fiscal Years 2008 Through 2012 (Dollars in Millions)						
	2008	2009	2010	2011	2012	Percentage Change 2008-2012
Revenue	\$4.1	\$4.1	\$4.6	\$4.5	\$4.5	10%
Expenditures	\$4.0	\$4.6	\$4.4	\$4.6	\$4.6	15%
FTE Appropriation	39.0	40.8	40.0	40.0	40.0	3%
Source: Sjoberg Evashenk Consulting's analysis of Colorado Financial Reporting System (COFRS) data.						

The Office is cash funded and receives revenue from the agencies for which it conducts hearings. These client agencies receive an appropriation to purchase hearing services from the Office. The Office bills the client agencies for a proportional share of its total operating costs, including rents, salaries, and legal services. Each client agency's share is based on the percentage of the Office's workload attributable to the agency in the prior fiscal year. For example, workers' compensation cases accounted for approximately 57.7

percent of the Office’s workload in Fiscal Year 2011. Therefore, in Fiscal Year 2012, DOWC paid the Office \$2.6 million, or 58 percent of the Office’s operating costs. The following chart shows the breakdown of revenue by client agencies for Fiscal Year 2012.

Figure 2: Revenue by Client Agencies



Source: Sjoberg Evashenk Consulting’s analysis of Colorado Financial Reporting System (COFRS) data.
Note: “Other” includes the Departments of Education, Corrections, Public Health and Environment, Personnel & Administration, Higher Education, State, and Transportation; school districts; and interest income.

Audit Scope and Methodology

Section 8-47-101(3)(d)(II), C.R.S., of the Workers’ Compensation Act requires the Office of the State Auditor to conduct a performance review every four years of the ALJs who hear workers’ compensation cases. The last performance audit of the Office was conducted in 2008; the Office of the State Auditor contracted with Sjoberg Evashenk Consulting, Inc., to conduct this performance audit. Audit work was performed from March through September 2012. We acknowledge and appreciate the cooperation and assistance provided by the Office, the Department of Personnel & Administration, and the Division of Workers' Compensation during the course of this audit.

According to statute [Section 8-47-101(3)(d)(II), C.R.S.], the review should assess the following:

- Time elapsed from the date of hearing until decisions are rendered by the ALJs;
- Time elapsed from the point at which the file is complete and the case is ready for order until the decision is rendered by the ALJs;

- Number of decisions that are reversed upon appeal to the Industrial Claim Appeals Panel (ICAP) and to the Colorado Court of Appeals;
- Workload or number of cases assigned to each ALJ; and
- Public perception of the quality of the performance of the Office of Administrative Courts with respect to matters arising under the Workers' Compensation Act of Colorado.

Therefore, the objective of this audit was to evaluate the Office's performance with respect to workers' compensation hearings. Specifically, the audit evaluated:

- Whether the Office is conducting workers' compensation hearings and issuing decisions in a timely manner.
- Whether the Office equitably distributes and effectively manages ALJ workload to ensure timely and appropriate dispositions.
- The frequency with which ALJ workers' compensation hearing decisions are reversed or remanded on appeal.
- The public's perception of the quality of the Office's performance with respect to workers' compensation hearings and whether the Office provides effective customer service to meet the needs of the public and the practitioners that it serves.
- Whether there are opportunities for the Office to better utilize its case management system, Legal Files, to increase the efficiency of the hearing process for the Office's client agencies.
- The extent to which the 2008 audit recommendations have been implemented, and to conclude on whether any further action to implement is warranted.

To accomplish the audit objectives, we conducted the following audit work:

- Reviewed relevant statutes [Section 8-43-101, *et seq.*, C.R.S.], the Office's *Procedural Rules for Workers' Compensation Hearings* and policies, instructions and guidance provided on the Office's website, and the Legal Files user manual provided to staff.
- Interviewed staff and management at the Office, DOWC, and ICAP, and observed key processes for scheduling hearings, presiding over hearings, issuing decisions, and processing appeals. We also discussed customer assistance and the functionality of Legal Files.
- Obtained and reviewed informational resources made available to the public, including the Office's and DOWC's websites, brochures, and pamphlets available at the Office's public counter in Denver.

- Analyzed data from Legal Files and calculated the number of days elapsed between each of the hearing milestones set forth in statute. Specifically, we selected a sample of 682 (85 percent) of the 806 merit cases that began and concluded during Fiscal Year 2012. This sample included every case beginning and ending in Fiscal Year 2012 for which Legal Files contained sufficient data to assess compliance with statutory or regulatory timeframes. To test compliance with statute, we extracted data from Legal Files, identified the application date, setting date (i.e., the date the claimant commits to notifying the Office of the hearing date), hearing date, and order date for each of the 682 cases, and calculated the time it took the Office to schedule hearings, complete hearings, and render decisions during the fiscal year.
- Reviewed case file data from Legal Files for all workers' compensation appeals filed between Fiscal Years 2008 and 2012 to identify the frequency with which the ALJs' workers' compensation hearing decisions were reversed or remanded and to determine if the data recorded in Legal Files is accurate and complete. During the period reviewed, there were 1,061 appeals that addressed a total of 1,297 distinct issues.
- Assessed Legal Files and evaluated its functionality, data accuracy, and whether Legal Files is able to produce timely, accurate, reliable, and useful reports for the Office and DOWC management. We also evaluated the extent to which redundancies or inefficiencies existed between Legal Files and DOWC's legacy case management system, the Division of Workers' Compensation Claims System established on the State's General Government Computing Center mainframe.
- Conducted a confidential survey of parties seeking to resolve workers' compensation disputes through the Office during Calendar Year 2011. We issued email surveys to all 431 parties involved in the almost 1,300 cases heard by the Office in Calendar Year 2011 for whom Legal Files contained adequate contact information. The total number of individual respondents to our survey is less than the total number of cases because many of the attorneys surveyed provided legal services in multiple cases. Of the 431 participants surveyed, we received responses from 142 (a 33 percent response rate), as follows:
 - 195 of the 431 (45 percent) participants surveyed were claimant attorneys, from which we received 67 responses (a 34 percent response rate);
 - 147 of the 431 (34 percent) participants surveyed were responding party attorneys, from which we received 54 responses (a 37 percent response rate); and
 - 89 of the 431 (21 percent) participants surveyed were parties acting *pro se*, or without legal representation, from which we received 21 responses (a 24 percent response rate).

When samples were chosen, the results of our testing were not intended to be projected to the entire population. Rather, cases were selected to provide sufficient coverage of those areas—such as assessing compliance with statute and the Office’s controls over the workers’ compensation hearing process—that were significant to the objectives of this audit. Additional details about audit samples and testing results are discussed in each of the individual audit findings and recommendations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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Workers' Compensation Hearings

Chapter 2

Statute gives the Office of Administrative Courts (the Office) original jurisdiction to hear and decide all matters arising under the Workers' Compensation Act of Colorado [Section 8-43-201, C.R.S.]. When an injured employee is not satisfied with his or her employer's decision regarding workers' compensation benefits, the employee can file an application with the Office for a hearing before an Administrative Law Judge (ALJ). The ALJ assigned to the case will preside over the hearing and issue an order setting forth his or her decision. In the workers' compensation hearing process, employees can obtain legal representation or represent themselves (referred to as "*pro se*" parties) throughout the process. The Office's mission is to provide fair, timely, and efficient administrative hearings and mediations.

The Office holds two different types of workers' compensation hearings: merit and procedural.

- **Merit hearings**—hearings in which the ALJ must decide on issues of liability and compensability (i.e., whether an injury occurred on the job) based on the merits of a case, and may result in decisions requiring a party to pay a penalty or benefits or denying a claimant any benefit or penalty. There are two general types of merit hearings:
 - **Standard**—hearings in which witnesses are sworn in, testimony is taken, and both parties submit arguments in support of or in opposition to the substantive issues of the case. Standard merit hearings are generally the most complex type of hearing and they require the most resources to adjudicate.
 - **Disfigurement**—hearings in which the ALJ must decide on the amount of additional monetary compensation owed to the employee for a disfigurement, such as a scar or dismemberment, to areas of the employee's body normally exposed to public view. Disfigurement hearings are less complex because issues of liability and compensability have already been determined.
- **Procedural hearings**—hearings in which the ALJ must decide on procedural issues, such as issuing orders on motions filed by the parties, determining the admissibility of evidence, and granting or denying requests for extensions of time. Procedural hearings, which help ensure the fair and consistent application of the law, are generally less complex and time consuming than merit hearings.

When issuing a decision for a merit hearing, the ALJ can issue either a "full" or "summary" order. A full order contains specific findings of fact, determinations of

credibility and/or persuasiveness, conclusions of law, and the ALJ’s decision to grant or deny benefits. A summary order is meant to be shorter and less specific than a full order, and is essentially a statement of the ALJ’s order granting or denying benefits. A party dissatisfied with an ALJ’s summary order may request a full order.

The following table shows workers’ compensation workload statistics overall for the Office and on average per-ALJ for Fiscal Years 2008 through 2012. As the table shows, the percentage of cases docketed, or scheduled, has increased more than 45 percent since Fiscal Year 2008, while the actual number of hearings held has decreased 19 percent during this time period. There are similar trends when looking at workload on an average per-ALJ basis. As discussed later in this chapter, many of the cases docketed for hearing are settled or vacated prior to the hearing.

Table 2: Office and Average Per-ALJ Workload and Resource Statistics

Office of Administrative Courts Fiscal Years 2008 Through 2012						
Overall Workload	2008	2009	2010	2011	2012	Percentage Change 2008 to 2012
Cases Docketed ¹	6,076	5,396	5,311	5,513	8,835	45%
Hearings Held ²	2,269	2,081	2,072	2,000	1,833	-19%
Orders Issued ³	7,159	9,806	10,088	9,821	8,626	20%
Workload per ALJ⁴	2008	2009	2010	2011	2012	Percentage Change 2008 to 2012
Cases Docketed ¹	557	495	487	463	742	33%
Hearings Held ²	208	191	190	168	154	-26%
Orders Issued ³	657	900	926	825	725	10%

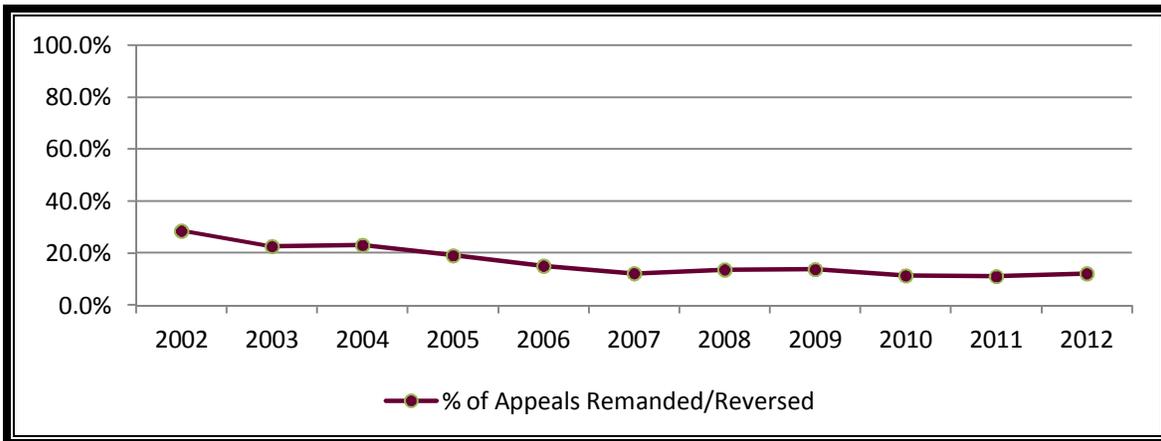
Source: Sjoberg Evashenk Consulting’s analysis of Office of Administrative Courts’ Legal Files data.
Notes: ¹“Cases Docketed” includes all cases in which a complete application for hearing was submitted to the Office, and for which a hearing was set.
²“Hearings Held” includes standard merit hearings, disfigurement merit hearings, and procedural hearings, as well as other hearings such as pre-hearings, status conferences, and mediations.
³ ALJs can issue multiple orders in a case; therefore, the number of “orders issued” is greater than the number of “hearings held.”
⁴ Per-ALJ workload statistics were calculated based on estimated FTEs dedicated to workers’ compensation cases only, and included billable hours dedicated to ALJs that split their time between workers’ compensation and general services cases, and other administrative duties. Estimated FTEs ranged from 10.9 to 11.9 ALJs between Fiscal Year 2008 and 2012.

If either party is dissatisfied with the ALJ’s decision on any issue that “requires any party to pay a penalty or benefits or denies a claimant any benefit or penalty,” they can file a Petition to Review, or appeal, with the Office [Section 8-43-301, C.R.S.]. When an appeal is filed, the ALJ must issue a “supplemental order” revising or clarifying the original order, or forward the case to the Industrial Claim Appeals Panel (ICAP), an appellate body within the Department of Labor and Employment. ICAP decisions can be further appealed to the Colorado Court of Appeals. After accepting and hearing an appeal, ICAP or the Court of Appeals may issue an order “affirming” or upholding the

original order, “remanding” or returning the case to the Office for reconsideration or clarification of facts, or “reversing” or overturning the original decision.

Over the last 10 years, the number of ALJ decisions appealed has decreased by 34 percent, from 357 in Fiscal Year 2002 to 237 appeals in Fiscal Year 2012. Over the same period, the percentage of appeals that resulted in reversed or remanded decisions steadily declined from 27 percent in Fiscal Year 2002 to 12 percent in Fiscal Year 2012, as illustrated in Figure 3.

**Figure 3: Percentage of Appeals that were Reversed or Remanded
Fiscal Years 2002 Through 2012**



Source: Office of the State Auditor’s 2008 Performance Audit of the Office of Administrative Courts (Fiscal Years 2002-2007) and the Office’s case management system, Legal Files (Fiscal Years 2008-2012).

As required by statute, this audit reviewed the Office’s workers’ compensation hearing process. Overall, we found that in many respects, the Office has performed well in offering independent workers’ compensation hearing and adjudication services to the public. We found that the Office is processing standard merit hearings more timely than it did in Fiscal Year 2007, at the time of the last audit; that parties are generally satisfied with the quality of services provided by the Office, particularly with respect to their interactions with ALJs and Office staff; and, as illustrated in Figure 3, the number of ALJ decisions reversed or remanded has remained at its lowest levels in a decade, indicating an overall increase in the quality and consistency of decisions issued by the Office.

We also found that the Office has taken several steps to improve its operations and hearing services since the Office of the State Auditor’s 2008 performance audit. For example, the Office increased its capacity to hear cases by creating a "virtual hearing" room that allows parties to conduct hearings via video conference, and cross-trained additional ALJs to hear both workers’ compensation and general services cases. These changes gave the Office greater flexibility with respect to its ALJ resources and helped alleviate what is sometimes a heavy workload in the regions, by assigning more regional cases to ALJs in the Denver office to be heard virtually. Finally, prior to audit fieldwork, the Office had begun implementing a process to elicit customer feedback in a routine and timely manner, allowing it to assess its own performance and promote continuous improvement.

This audit identified several areas where additional improvements can be made to the Office's workers' compensation hearing process. Specifically, we found that the Office could further improve (1) the timeliness with which workers' compensation cases are heard and resolved; (2) information technology resources available to the Office, its client agencies, and parties appearing before it; and (3) the public's perception of the Office and its customer service. Each of these findings and our recommendations for improvement are discussed throughout the remainder of this chapter.

Timeliness

The administrative law hearing process was designed to allow parties to successfully resolve disputes in a timely manner without the necessity of legal representation. This approach streamlines the process, cuts down on the financial burden to the parties involved, and provides a more timely and expeditious alternative to district court. Statute mandates that the Office schedule hearings and issue decisions within prescribed timeframes, reflecting the General Assembly's intent that cases progress at a pace that ultimately results in the timely disposition of cases.

Workers' compensation cases move through the hearing process according to a series of time lines. Statute requires the Office to schedule hearings for most cases within 100 days of the "setting date," which is the date the claimant commits to notifying the Office of the hearing date. Statute also allows parties to apply for an expedited hearing [Sections 8-43-203(1)(a) and 8-42-105(2)(a), C.R.S.], recognizing that waiting 100 days may cause undue financial hardship in the event an insurance carrier or employer denies liability. The purpose of the expedited process is to ensure that employees who are unable to afford medical treatment for their injuries receive quicker resolution of their workers' compensation claims than is allowable under the standard time lines. In Fiscal Year 2012, of the 682 merit cases selected for review, 25 (4 percent) followed the expedited time line. The Office further requires, through Rule 10, timelier hearings for all disfigurement cases, primarily because these cases are less complex and take less time to resolve, resulting in timelier awards for parties injured on the job.

Statute requires this audit to report on the time elapsed from the date of hearing until decisions are rendered and the time elapsed from the point the file is complete and the decision is issued by the ALJ.

What audit work was performed and what was the purpose?

We conducted the following audit work:

- Analyzed data from the Office's case management system, Legal Files, and calculated the number of days elapsed between each of the hearing milestones set forth in statute. As discussed previously, we selected a sample of 682 (85 percent) of the 806 merit cases that began and concluded during Fiscal Year 2012 for review. We reviewed a total of 697 hearings for these 682 cases; 15 of the 682 cases had hearings that were continued during our review period and the continued hearings were included in the review. To test compliance with statute,

we extracted data from Legal Files, identified the application date, setting date, hearing dates, and decision date for each of the 682 cases, and calculated the time it took the Office to schedule hearings, complete hearings, and render decisions during the fiscal year.

- Reviewed relevant statutes [Section 8-43-201, C.R.S.], the Office's *Procedural Rules for Workers' Compensation Hearings* and policies, and instructions and guidance provided on the Office's website to identify mandated time frames for processing workers' compensation cases.
- Interviewed Office management and staff and observed key processes to identify the methods employed to process cases and ensure compliance with timeliness requirements.
- Conducted a confidential survey of parties seeking to resolve workers' compensation disputes through the Office during Calendar Year 2011, which included questions regarding the timeliness of scheduling hearings and issuing decisions.

The purpose of the audit work was to determine whether workers' compensation hearings are set and decisions are issued within the time lines defined in statute. Therefore, when we refer to the timeliness of hearings or orders, we are referring specifically to the timeframes mandated in statute or Office rule, as described further in this finding.

How were the results of the audit work measured?

Although statute does not define the period within which a workers' compensation case must be fully processed and resolved, statutes prescribe specific timeframes that the Office must meet when scheduling merit hearings and issuing decisions. In addition to statute, the Office has established procedural rules that also prescribe timeframes for scheduling hearings and issuing decisions in certain cases.

When scheduling hearings, statute and Office Rules recognize two distinct points during the scheduling process that mark the beginning of the timeframe within which a hearing must be held. The Office opens a case for adjudication upon receipt of a complete application for hearing. The timeliness of expedited and disfigurement hearings are measured against the date of application. In the application, the claimant is required to specify a date and time by which the claimant will notify the Office of the date selected for hearing; the date the claimant commits to notifying the Office of the hearing date is referred to as the "setting date," and must occur no sooner than 10 days and no later than 20 days after the application is mailed to or filed with the Office. As a result, the setting date is generally between 10 to 20 days after the application date. The timeliness of standard merit cases is measured against the setting date. All required timeframes are illustrated in Table 3.

Table 3: Requirements for the Processing of Workers' Compensation Cases

Office of Administrative Courts Fiscal Year 2012		
Phase	Category	Timeframe
Setting Hearings	▪ Expedited Hearings—Application date to hearing date [Sections 8-43-203(1)(a) and 8-42-105(2)(a), C.R.S.; Office Rule 9(F)]	▪ 40 calendar days
	▪ Disfigurement Hearings—Application date to hearing date [Office Rule 10(A)(4)]	▪ 40 calendar days
	▪ Standard Hearings—Setting date to hearing date [Section 8-43-209(1), C.R.S.; Office Rule 8(I)]	▪ 100 calendar days
Granting Extensions	▪ One extension of no more than 60 days shall be granted by the ALJ upon agreement of the parties [Section 8-43-209(1), C.R.S.]	▪ 60 calendar days
	▪ One extension of time to commence the hearing when pulmonary lung disease, cancer, cardiovascular disease, or stroke is alleged as the cause of the disability; subsequent injury fund is a party; total disability is alleged, upon agreement of parties; or compensability of the injury is contested [Section 8-43-209(2), C.R.S.]	▪ 60 calendar days
	▪ Extension of time to commence the hearing upon written request by any party to the case and for good cause shown [Section 8-43-209(2), C.R.S.]	▪ 20 calendar days
Granting Continuances	▪ Continue a hearing that commenced to a later date to complete the hearing [Section 8-43-209(3), C.R.S.]	▪ 30 calendar days
Issuing Decisions	▪ Conclusion of hearing to issuance of a summary or full order [Section 8-43-215, C.R.S.]	▪ 15 working days
	▪ Parties receiving a summary order to request a full order [Section 8-43-215, C.R.S.]	▪ 7 working days
	▪ Full order request received to issuance of full order [Section 8-43-215, C.R.S.]	▪ 10 working days
Source: Colorado Revised Statutes and Office Rules.		

As shown in the table above, statute includes two provisions allowing the Office to grant extensions and the Office has interpreted statute to limit extensions to no more than 80 days beyond the 40- or 100-day timeframe, depending on the type of case, as set forth in statute. Based on this interpretation, when extensions are granted, expedited cases must be held within a maximum of 120 days of the application for hearing and standard cases must be heard within a maximum of 180 days of the application for hearing.

Further, when determining compliance with the statutory mandate to issue orders within 15 working days of the conclusion of the hearing, there are two interpretations of "conclusion of hearing:" (1) the date of the final hearing before an ALJ, or (2) the date the ALJ receives all post-hearing submissions, which can include legal briefs, proposed orders, and position statements submitted after final oral arguments. Statute requires this audit to evaluate the timeliness of ALJ decisions against both criteria by measuring (a) the time elapsed from the date of hearing until decisions are rendered and (b) the time elapsed from the point at which the file is complete and the case is ready for order until decisions are rendered by the ALJs [Section 8-47-101(3)(d)(II), C.R.S.].

What did the audit work find?

Overall, we found that while the Office has improved the timeliness of its workers' compensation hearing process, the Office did not always meet required time frames for scheduling hearings and issuing decisions. Of the 697 hearings reviewed, we found that 210 (30 percent) hearings exceeded statutory and regulatory time requirements for scheduling hearings. Only one of the 697 hearings reviewed exceeded the statutory maximum of 180 days from the setting date to the actual hearing date. In addition, we found that at least 118 (17 percent) of the 682 decisions reviewed exceeded statutory time requirements. Specifically:

- **Hearing Timeliness.** We found that the Office did not consistently hold expedited, disfigurement, standard, or continued hearings within the statutory and regulatory prescribed timeframes, as shown in Table 4.

Table 4: Hearing Timeliness

Office of Administrative Courts Fiscal Year 2012							
Type of Merit Hearing	Statutory Timeframe (Calendar Days)	Number of Hearings Reviewed	Number of Hearings Exceeding Timeframe	Number of Days Past Timeframe			
				1-10	11-20	21-30	>30
Disfigurement	40 days ¹	325	163	131	9	3	20
Expedited	40 days	25	17	6	5	1	5
Standard	100 days	332	20	9	3	2	6
Continued	30 days	15	10	0	5	3	2
TOTAL		697	210	146	22	9	33

Source: Sjoberg Evashenk Consulting's analysis of case file data extracted from Legal Files.
Note: ¹The 40-day requirement for disfigurement hearings is set in Office Rule 10(A)(4). This rule shortens the timeframe for hearing disfigurement cases; according to statute, these cases should be heard within 100 calendar days.

Although we identified instances where hearing dates exceeded the mandated timeframes, on average, hearings are timelier now than they were at the time of the Office of the State Auditor's 2008 performance audit. In 2007, on average, the Office took 111 calendar days from application to schedule merit hearings (not including disfigurement cases, which the Office classified differently in 2007), compared with 105 calendar days for all non-disfigurement cases in Fiscal Year 2012.

- **Decision Timeliness.** We found that the Office did not consistently issue decisions within statutorily prescribed timeframes. For the 682 decisions in our sample, we assessed both the time elapsed from the "date of hearing" until decisions were issued and from the "date of file completion" until decisions were issued and found the following.

Table 5: Decision Timeliness

Office of Administrative Courts Fiscal Year 2012							
Measurement Standard	Statutory Timeframe (Working Days)	Number of Decisions Reviewed	Number of Decisions Exceeding Timeframe ¹	Number of Days Past Timeframe			
				1-10	11-20	21-30	>30
Date of Hearing	15 days	682	226	89	47	27	63
Date of File Completion	15 days	682	118	66	20	15	17

Source: Sjoberg Evashenk Consulting’s analysis of case file data extracted from Legal Files.
Note: ¹ Decisions counted as “exceeding timeframe” in each row are not mutually exclusive; those counted in the “Date of Completion” row are also counted in the “Date of Hearing” row.

On average, the Office is timelier now in issuing decisions than it was at the time of the Office of the State Auditor’s 2008 performance audit. In 2007, the Office took an average of 15 working days to issue decisions, compared with 12 working days in Fiscal Year 2012.

Why did the finding occur?

Several factors contributed to delays experienced by the Office in scheduling hearings and issuing decisions. Some factors impacting delays fall outside of the Office’s control, such as the increase in the number of cases scheduled for hearing during Fiscal Year 2012. As illustrated in Table 2, the Office experienced a 33 percent increase in cases docketed between Fiscal Years 2008 and 2012. The Office’s increase in case volume has a cascading effect by increasing workload demands for ALJs, thus impacting the timeliness of the hearing process. Regardless of this increase in caseload, the Office has a limited number of courtrooms and ALJs, and must balance the needs of parties scheduling workers’ compensation hearings with the needs of different client agencies and statutory requirements associated with other case types. This requires the Office to set priorities when scheduling hearings and assigning ALJ workloads.

Recognizing these challenges, we also identified factors that affect the timeliness of the hearing and decision processes that are within the Office's control. These include:

- **Timeliness of Hearings.** We identified the following factors that impede the Office’s ability to hear cases in a timelier manner.
 - **The Office limits the number of hearings scheduled using its trailing docket and does not track those instances when courtrooms are not used.** The Office utilizes both trailing and standard dockets to schedule cases. Courts use a standard docket to schedule hearings for specific time slots throughout a given day. This provides a clearly defined schedule for a particular day’s hearing calendar. However, when there is a significant likelihood that cases could be vacated, rescheduled, or settled prior to the hearing itself, timeslots on a standard docket are likely to be left empty,

creating underutilized courtrooms and judges, and potentially contributing to case backlogs and longer delays. In such cases, a trailing docket is often used to schedule cases. A trailing docket allows the Office to schedule more hearings in a day than it can actually hold, knowing that many of the cases will settle, be rescheduled or vacated, or be granted an extension prior to the hearing date. Courts will review the docket just prior to the hearing date to remove all cases that have fallen off the docket, and then will schedule all remaining cases for specific timeslots throughout the day. In the Denver and Grand Junction offices, there are three trailing docket days scheduled per week (Tuesday, Wednesday, and Thursday) and in the Colorado Springs office there are two trailing docket days per week (Tuesday and Wednesday). In all three offices, the non-trailing docket days are set aside for a standard docket to schedule half- and full-day hearings, as well as continued hearings.

Currently, the Office only allows parties to use its online calendar to identify available hearing dates for those days with a trailing docket. Parties must notify the Office of their selected hearing date to be placed on the trailing docket. The non-trailing docket days are not available for online scheduling. Further, while the Office has five formal courtrooms, two are primarily dedicated to General Services cases. This means that workers' compensation trailing dockets are scheduled in the three remaining courtrooms. In addition to these three courtrooms, the Office has a "virtual hearing" room and conference rooms that can be used for hearings, presenting two opportunities to expand the trailing docket. First, the Office can make the virtual hearing and conference rooms available on the trailing docket, even if on a limited basis. Making these rooms available for the trailing docket would make more hearing times available, creating more options for parties seeking a timelier hearing.

Second, the Office can increase the number of hearings scheduled on the trailing docket for the three courtrooms, and increase the use of the virtual hearing and conference rooms to accommodate the potential for overbooking. As discussed previously, many parties cancel, vacate, or reschedule hearings prior to the hearing date, creating situations in which courtrooms are not utilized. While the Office does not currently track underutilized courtrooms, data analysis reveals that while more hearings were scheduled (docketed) in Fiscal Year 2012 than in Fiscal Year 2008, fewer hearings are being held, suggesting more hearings are vacated or rescheduled. Specifically, as illustrated in Table 2, in Fiscal Year 2008, the Division docketed 6,076 cases and held 2,269 hearings—or 37 percent of the docketed cases; in Fiscal Year 2012, the Division docketed 8,835 cases and held 1,833 hearings—or 21 percent of the docketed cases—creating the potential for more underutilized hearing rooms. Tracking underutilized courtrooms and the rate at which hearings are vacated or rescheduled will better enable the Office to optimize its trailing docket and

its courtroom resources, and could create additional opportunities for parties seeking more timely hearing dates.

- **The Office requires parties to wait a minimum of 80 days for a hearing.** Statute states that "hearings shall be set ... within eighty to one hundred days after ... (a) The director sets any issue for hearing ... (b) Any party requests a hearing on issues ripe for adjudication ... (c) Any party or the attorney of such party sends notice to set a hearing on issues ripe for adjudication to opposing parties or their attorneys" [Section 8-43-211(2), C.R.S.]. The Office's interpretation of this statute is that it requires hearings to be scheduled at least 80 days *after* the "setting date," which, as described previously, is between 10 and 20 days after a claimant files an application for a hearing. This interpretation means that the parties typically have between 80 and 100 days after the setting date, or a 20-day period, in which to schedule a hearing.

However, we interpret statute to not preclude earlier hearing dates. While requiring hearings to be set "within eighty to one hundred days" of the "setting date," statute also allows hearings to be expedited for good cause [Section 8-43-211(2)(a), C.R.S.]. Because this provision does not define "good cause," we interpret this to be a matter of judicial discretion and may include instances in which delays could result in financial hardship or when cases are ready to be heard and an earlier hearing date would be advantageous to the parties. This discretion provides greater flexibility than the 40-day expedited timeline, which only applies when the issue of compensability is contested [Sections 8-42-105(2)(a) or 8-43-203(1)(a), C.R.S.].

Our analysis of the Office's trailing docket revealed that allowing hearings to be scheduled prior to the current 80-day timeframe could help address a need for parties who do not qualify for an expedited hearing, but who want their cases heard as soon as possible. For example, a party trying on May 29, 2012, to schedule a hearing had six trailing docket days to choose from between August 21 and September 6, 2012 (the 80- to 100-day window used by the Office). Although there were 16 additional trailing docket days available prior to August 21, these days were unavailable because they fell before the 80-day timeframe. Our survey of parties appearing before the Office revealed the timely scheduling of hearings to be of concern to the public. Allowing for more timely "standard hearings," where feasible, would better serve the needs of parties appearing before the Office.

- **ALJs may not always issue a formal order when granting extensions or continuances, or reflect the extension or continuance in Legal Files.** Extensions and continuances are procedural matters that require a formal decision by an ALJ; this decision can be made on the record in the courtroom or through a written procedural order. In both cases, reflecting

the decision in Legal Files is necessary to ensure management reports on timeliness are accurate. According to the Director, ALJs may not always draft a formal order granting an extension or a continuance, but will instead grant the extension or continuance during the hearing. In these instances, since a formal order is not issued, there is no process for entering the extension or continuance in Legal Files. By not accurately reflecting extensions and continuances in Legal Files, hearings that were timely held or decisions that were timely issued may appear to have been untimely.

- **Timeliness of Decisions.** We identified the following factors that impede the Office's ability to issue decisions in accordance with statutory requirements.
 - **Inconsistent use of summary orders.** Many ALJs continue to write full orders in lieu of summary orders, even though the Director issued guidance to ALJs encouraging the use of summary orders whenever practical. A full order contains specific findings of fact and conclusions of law and takes longer to write. By contrast, a summary order indicates an ALJ's final determination and can typically be completed in much less time than a full order. ALJs issued summary orders in only 46 (7 percent) of the 682 cases in our sample. Our analysis of the 118 decisions issued after the 15-day statutory requirement, as measured against the "date of file completion," revealed that ALJs issued summary orders in only 14, or 12 percent, of the cases. Summary orders provide a method ALJs may employ to expedite the issuance of decisions.
 - **Some ALJs are less timely than others.** Our analysis of 682 merit cases revealed that half of the ALJs assigned workers' compensation cases consistently issue decisions in a timely manner, while half do not consistently do so. Specifically, of the 14 ALJs hearing workers' compensation cases in Fiscal Year 2012, five did not issue a single late decision, while two others issued no more than two late decisions during the year. In contrast, the other seven ALJs issued between 12 and 23 late decisions each, ranging between 16 and 82 percent of the merit cases heard by each ALJ. We found no indication that ALJ workload contributed to late decisions; some ALJs with the highest workload did not issue any late decisions, while others did; and some ALJs that split time between workers' compensation cases and general services cases did not issue any late decisions, while others did. The Director has recently developed management reports to identify instances in which ALJs issue late decisions, as defined in statute, and should use this information to identify ways to improve the timeliness of decisions and when evaluating ALJ performance, assigning workload, and allocating resources.
 - **Decision backlogs are not fully considered when assigning cases.** Our review of the Office's process to assign ALJs to hearings found that the Office does not fully account for potential backlogs in decision writing

when assigning cases to ALJs. Assigning cases to ALJs is a two-step process. First, prior to each month, the Division assigns ALJs to docket days based on their availability, accounting for scheduled time off and their overall workload. This occurs approximately 30 to 45 days prior to a hearing date. Second, as the hearing date approaches, staff identifies all cases on the trailing docket that have been vacated, rescheduled, or otherwise stricken, and determines the number of hearings that will actually take place on the following day. Staff then assigns each case to an ALJ. When doing so, however, the staff do not account for the ALJ's outstanding workload, including backlogs in issuing decisions. Accounting for an ALJ's real-time backlog would better enable the Office to determine whether the backlog is the result of a heavy workload, and thus lighten the ALJ's workload by not assigning additional cases, or whether the backlog is the result of other operational or performance factors.

- **Manual tracking process.** Historically, the Office has not used its automated case management system, Legal Files, to track and monitor the timeliness of the hearing and decision processes with respect to statutory requirements. This occurs, in part, because the Office continues to rely to some extent on manual processes to track and monitor workload and key milestones in lieu of utilizing some of the case management features available in Legal Files, including the use of queues, calendars, and other reminders. According to the Office, although Legal Files has the ability to automatically add reminders or tasks to help manage cases, this function has not been fully adopted by the Office for workers' compensation cases.

In addition to relying on manual processes, staff does not consistently enter accurate case information into Legal Files. In the first half of Fiscal Year 2012 alone, we found that staff had incorrectly designated 15 (36 percent) of at least 42 continued hearings as "held," although the hearings had actually been continued. This is significant because hearings must be held within 100 days of the setting date, and for every hearing designated as "held," an order should be issued within 15 working days; misclassifying continuances can cause Legal Files reports to show non-compliance with these timeframes even when hearings are held and decisions are issued on time. Beginning in July 2011, the Office began preparing reports with data extracted from Legal Files that will improve the Office's ability to evaluate timeliness on a routine basis. The Office is still in the process of refining these reports to ensure their accuracy before they can be relied upon to monitor timeliness.

Why does the finding matter?

Delays impact all parties involved in the workers' compensation hearing process. For parties where medical benefits are in dispute, delays can create undue financial hardship for injured workers and their families, such as when issues of compensability or

compensation are in question. Delays also reflect negatively on the Office and the State. While our survey revealed that parties were generally satisfied with the timeliness of hearing and ALJ decisions, parties remained less satisfied with the Office's timeliness than with other aspects of its performance. For instance, 26 (18 percent) of the 142 survey respondents indicated either strong or moderate dissatisfaction with the Office's scheduling of timely hearings or the issuance of decisions. A few of these respondents cite specific concerns such as waiting months to schedule a hearing date; waiting over six months for a judicial decision; and the scheduling of several hearing days spread over multiple months instead of being heard over consecutive days.

Recommendation No. 1:

The Office of Administrative Courts should ensure that workers' compensation cases comply with statutory requirements related to the timeliness of hearings and decisions by:

- a. Opening additional scheduling opportunities for the Office's trailing docket by allowing scheduling on Mondays and Fridays, at least on a limited basis, and expanding the number of hearings available using the Office's "virtual hearing" conference room and other conference rooms on its premises.
- b. Allowing parties to schedule hearings on the trailing docket on any day in which there is an opening, rather than requiring parties to wait a minimum of 80 days.
- c. Ensuring that all extensions or continuances granted are accurately recorded in Legal Files as well as the reason for the extension or continuance.
- d. Continuing to encourage Administrative Law Judges (ALJs) to use summary orders whenever practical, particularly when an ALJ anticipates he or she will not be able to issue a decision within statutory time lines.
- e. Considering the number of late decisions issued by an ALJ when evaluating performance and using this information to identify ways to improve the timeliness of decisions.
- f. Accounting for ALJs' outstanding workload, including backlogs in issuing decisions, when assigning hearings.
- g. Using the reporting capabilities in Legal Files to track and monitor timeliness with respect to statutory requirements, in conjunction with Recommendation No. 2.

Office of Administrative Courts Response:

- a. Agree. Implementation date: October 2012.

The Office of Administrative Courts is in the process of refining its docketing system to allow parties to schedule workers' compensation

hearings on select Monday and Friday calendars. The Office currently uses conference rooms, including the virtual hearing room, in all three statutory locations as overflow hearing rooms and will continue with this process.

- b. Agree. Implementation date: October 2012.

The docketing system refinements in progress also include changes to allow parties to schedule standard workers' compensation hearings on days prior to the 80-day time period. The Office recognizes that the scheduling of any such hearings will depend on three factors: whether earlier dates are available to the parties, whether there is enough time to legally notice the earlier hearing date, and whether the parties are amenable to the earlier date.

- c. Agree. Implementation date: October 2012.

The Office is in the process of refining the process of entering orders into the case management system to ensure that all continuances and extensions granted on the record are accurately reflected in the database.

- d. Agree. Implementation date: Implemented.

The Office has previously issued an internal policy encouraging the use of summary orders. As indicated in the response to recommendation 1(e) below, the Office will be using monthly timeliness reports as well as summary order reports in the assessment of ALJ performance beginning immediately.

- e. Agree. Implementation date: Implemented.

The Office currently assesses overall timeliness in issuing decisions when conducting ALJ performance evaluations, but does not solely account for strict statutory compliance when doing so. The Office will begin using monthly timeliness reports as well as summary order reports, which will account for statutory criteria, in the assessment of ALJ performance.

- f. Agree. Implementation date: Implemented.

The Office currently relies on the ALJs to indicate to the unit supervisor if they are behind in orders. As discussed in the response to recommendations 1(d) and 1(e), the OAC has begun running monthly timeliness and summary order reports. The OAC will use these reports as an indicator to whether an individual ALJ is behind when setting future dockets.

- g. Agree. Implementation date: Implemented.

As discussed above, the OAC has begun running monthly timeliness and summary order reports. The Office will begin using monthly timeliness reports as well as summary order reports in the assessment of ALJ performance.

Information Technology

The Office of the State Auditor's 2004 performance audit found that the case management system utilized by the Office at that time lacked the capabilities needed by both the Office and its client agencies—primarily the Division of Workers' Compensation (DOWC)—to properly manage hearings and claims. In 2004, the Office procured a new case management system from Legal Files Software, Inc. (Legal Files), to increase office efficiency, better manage and docket cases, and provide case information needed for management oversight. The system was fully implemented in Fiscal Year 2006 and the Office maintains an annual contract with the vendor for continued support of the system. The total contractual cost of Legal Files to the Office has been about \$320,725 since the system was implemented. To enhance system functionality, the Office requested and received budgetary authority for Fiscal Year 2013 to upgrade Legal Files and to procure an integrated e-filing system, which will allow for remote access to case information and enable parties to submit applications for hearing online. The cost of implementing these upgrades is estimated at more than \$400,000.

What audit work was performed and what was the purpose?

We performed the following audit work:

- Interviewed Office, DOWC, and Legal Files personnel to:
 - Evaluate the extent to which findings associated with information management that were included in the Office of the State Auditor's 2008 performance audit have been successfully resolved and to identify changes made to the Legal Files system since the audit;
 - Assess any concerns about the current functioning of the system; and
 - Determine the system's ability to interface with the data systems used by DOWC, and the benefits or adverse impacts that the existence of two separate data systems has on the two agencies.
- Reviewed the Legal Files user manual and walked through the system with Office personnel.

- Assessed system integrity issues (including data entry and system access), as well as whether the system is able to produce timely, accurate, reliable, and useful reports for the Office and DOWC management.

The purpose of the audit work was to assess the efficiency and effectiveness of the Office's case management system, Legal Files, and to identify opportunities for improving the functionality of the Legal Files system and the Office's use of the system.

How were the results of the audit work measured?

Although statute does not define specific requirements pertaining to the information systems maintained by the Office, sound business practices suggest that case management systems should provide management with accurate, meaningful, and timely information to facilitate effective oversight of its operations. In the Office, such a system—manual or automated—should facilitate management's oversight of statutory mandates as well as the fulfillment of its overall mission of allowing both state agencies and Colorado citizens to resolve workers' compensation disputes, while avoiding the time and expense of litigation in district court. A case management system should sustain a level of functionality and efficiency in three areas:

- It should provide Office management with accurate, useful, and timely information necessary to assess and improve overall operations.
- It should facilitate information sharing between the Office and key stakeholders, such as DOWC, as well as serve the reasonable needs of the public.
- To the extent that operational processes and data gathering are automated, the system should result in increased efficiency and more accurate and timely information, than would otherwise be possible.

What did the audit work find?

During this audit, we found that the Office has begun making significant progress in improving the usefulness of Legal Files, both to Office management and to its client agencies. However, system and administrative deficiencies persist and need to be rectified to ensure that the Office has sufficient information to oversee workers' compensation cases, which includes assessing the timeliness of its core activities and better managing and allocating staff resources.

The Office of the State Auditor's 2008 performance audit found that, when implemented, Legal Files was an improvement over the legacy case management system previously used to manage workers' compensation cases, the Division of Workers' Compensation Claims System established on the State's General Government Computing Center mainframe (herein referred to as DOWC's "legacy system"), because it enhanced the Office's ability to docket hearings. However, after investing approximately \$320,725 through Fiscal Year 2012 into implementing the Legal Files system, we found that there

are still limitations in the system's functionality and the Office's and DOWC's ability to use the system. For example:

- **Legal Files does not record necessary data in a format that facilitates the needs of DOWC, requiring DOWC to record data in both systems.** DOWC considers its legacy system to be the official system of record for all workers' compensation cases. While Legal Files provides enhanced case management system functionality, it is not capable of recording some information regarding case activity needed by DOWC. Therefore, the Office and DOWC continue to use both DOWC's legacy system and Legal Files, resulting in redundancies in data entry and case inquiries, and potential inconsistencies between data systems. Past attempts to integrate data recorded in Legal Files with DOWC's legacy system have failed because Legal Files currently does not record all necessary data in a manner that can be easily extracted and uploaded into DOWC's system. Several factors contribute to this, including:
 - Legal Files lacks certain discrete fields that would allow the recording of each event occurring on a case. For instance, some information in Legal Files is recorded in text format, making it difficult to convert the information into discrete codes readable in DOWC's legacy system. In other cases, data fields, such as application date or hearing date, are used to record multiple events, such as multiple applications. Correcting this may require additional fields to record distinct events.
 - Some information regarding a case—such as information regarding an ALJ's decision—is not reflected in Legal Files, and thus cannot be uploaded into DOWC's legacy system. This requires DOWC staff to read through each order to identify the information and to enter it into its system.
 - Legal Files does not have a "Pre-Hearing" screen, even though pre-hearing activity affects cases heard by the Office.

As a result, much of the data in Legal Files are not compatible with data in DOWC's legacy system, and Legal Files lacks critical functionality to produce management reports for determining compliance with statutory requirements.

- **Office staff must manually enter duplicate data into different fields in Legal Files.** Legal Files does not automatically populate the same fields between different screens within the system. Instead, Office staff must spend time going from screen to screen entering the same information into different areas of the case file. For instance, when an ALJ creates an order from a template in Legal Files, the ALJ must designate the type and classification of the order (e.g. summary or full order) in the template, and then must enter the same order information into the "Order" screen. In another example, when continuances are granted, staff must enter information regarding the continuance in the "Order" screen, then enter the same information in the "Calendar" screen to schedule the

next hearing and comment on the reason for the continuance. According to the Office, upcoming system improvements, including an e-filing system, will alleviate or resolve this issue altogether.

With the Division planning future upgrades to Legal Files, we find that now is an opportune time to address this finding. Doing so will require the Office, in collaboration with DOWC and the Governor's Office of Information Technology, to work with Legal Files Software, Inc., to ensure Legal Files contains information needed to enhance the efficiency and usefulness of the system as part of the Office's \$400,000 system upgrade.

Why did the finding occur?

The primary reason the Legal Files case management system has not fully met the Office's needs or expectations is that the system was not implemented as originally intended. Redundant data entry is required because, during implementation, the Office could not coordinate with the vendor and DOWC to either implement an adequate interface as requested in the Request for Proposals (RFP) or to develop data extraction protocols that effectively would have enabled DOWC to populate necessary fields in its legacy system. The Office's 2006 RFP outlined several functional requirements of a new case management system, including the ability to automatically retrieve and transmit specific data to or from DOWC's legacy system. In its proposal, the vendor agreed to implement an interface to meet this requirement. However, the Office and DOWC appeared to have different expectations regarding the exchange of data and did not reach an agreement as to how such an exchange should occur. As a result, Legal Files was never programmed for the exchange of data and the need for an interface remained unresolved after system implementation and rollout, leading the Office and DOWC to determine that duplicate data entry was the only option available to them. The Office and DOWC are currently working in concert to insure that data extraction from Legal Files is available to the DOWC.

Further, Legal Files does not easily produce necessary management reports because the Office did not explicitly delineate key system and reporting requirements in its original RFP. For instance, while stating that the system should include the ability to run management reports such as case status, cost, staff, and productivity reports, the RFP did not explicitly define the kind of timeliness reporting required to manage and oversee compliance with statutory time lines. Between Fiscal Years 2006 and 2011, the Office was entirely without the ability to produce meaningful management reports; however, in Fiscal Year 2011, the Office began the process to create management reports using data extraction software, and was continuing its efforts at the time of this audit.

Why does the finding matter?

The deficiencies previously outlined have kept the Office from realizing the full value of Legal Files as a case management system, which has impacted the Office's efficiency and inhibited its ability to produce meaningful and accurate management reports. The lack of complete and accurate data in Legal Files has meant that management lacks some of the information needed to fully oversee the workers' compensation hearing process. This

includes the information needed to assess the timeliness of case processing, manage and allocate staff resources, identify and address core operational challenges related to holding hearings and issuing orders, and evaluate the performance of individual ALJs. In addition, the deficiencies in Legal Files have resulted in the Office and DOWC using two different systems that do not interface with one another to document the workers' compensation hearing process. Having two systems is inherently inefficient and requires staff resources for duplicate data entry, and creates the potential for inconsistencies between the two systems.

Recommendation No. 2:

The Office of Administrative Courts (the Office) should improve the functionality of the Legal Files case management system by:

- a) Continuing to work collaboratively with the Division of Workers' Compensation (DOWC), the Governor's Office of Information Technology, and all stakeholder agencies during the development and implementation of system upgrades to ensure that the system meets user agency needs.
- b) Ensuring that the new contract with Legal Files Software, Inc., reflects all elements needed to improve the functionality of the system, including the production of management reports and the ability to extract data in a format that can be uploaded into DOWC's legacy system and that allows for efficient data analysis. The Office should hold Legal Files Software, Inc. accountable for delivering all required contract elements.
- c) Developing enhanced system reports that will allow management to regularly monitor compliance with timeframes set forth in statute and Office rules and policy.
- d) Enhancing efficiencies between the Office and DOWC by developing data extractions from Legal Files that can be uploaded into DOWC's legacy system.
- e) Determining the cost-benefit of programming the Legal Files system to automatically populate fields between different screens to reduce duplicate data entry.

Office of Administrative Courts Response:

- a. Agree. Implementation date: December 2012.

The Office renewed its contract with Legal Files in August of 2012. As part of this renewal, the Office negotiated an upgrade to the current web-based system. As stated in the response to Recommendation No. 2(b), the Office believes that the current contract should resolve previous issues surrounding Legal Files. The Office is working with the Governor's Office of Information

Technology and Legal Files to ensure that the DOWC and other user agencies can gain access through the web-based system to the necessary information contained in the Office's database. The DOWC, as well as other state agencies, will be involved in these discussions in an effort to ensure that the needs of the user agencies are met. In addition, the Office continues to meet with user agencies on a monthly basis to discuss issues.

- b. Agree. Implementation date: December 2012.

The Office believes that under the new web-based format, all user agencies will be able to run reports and extract the data necessary to ensure efficient delivery of information between the Office and these entities. Moreover, under the web-based format, the Office will be able to analyze data through an updated reporting function.

- c. Agree. Implementation date: Implemented.

The Office has spent the last year refining the management reports that it generates from its case management system, Legal Files. As a result, the Office has now developed accurate and verified reports that allow management to monitor the timeliness of judges and staff. These reports are now being generated on a monthly basis, as described in the response to Recommendation No's. 1(d), 1(e), 1(f), and 1(g).

- d. Agree. Implementation date: June 2013.

The Office continues to maintain a close relationship with DOWC. The Directors of the Office and DOWC meet on a monthly basis to discuss any issues that arise. The Director of the Office believes that establishing efficiencies and allowing DOWC to extract useful data from Legal Files is crucial. As a result of this belief, the Director of the Office is engaging the Director of DOWC and other DOWC system personnel to participate in both the implementation of the web-based version of Legal Files as well as in the implementation of the Office's new e-filing system, which will facilitate the compatible exchange of information between both systems.

- e. Agree. Implementation date: June 2013.

The Office is currently working with Legal Files to determine which fields in the various custom and non-custom screens can be automatically populated from a central point. Upon determining the fields that cannot be automatically populated, the Office will investigate how much in customization it would require to make such a process possible. Because the web-based version of Legal Files will assist in the implementation of the Office's e-filing system, these negotiations will continue during the implementation of e-filing.

Public Perception and Customer Service

A fundamental purpose of administrative law courts is to provide an accessible and cost-effective alternative to litigation in district court for all litigants, including those who choose to forego legal representation. Ensuring a fair and expeditious hearing process for all parties requires that the Office provide an appropriate level of information and assistance to parties navigating the hearing process. This is especially true for *pro se* (or unrepresented) claimants who are less likely to be familiar with the hearing process. *Pro se* claimants participated in 93 (7 percent) of the almost 1,300 merit cases heard by the Office in Calendar Year 2011. Recognizing its operation as a service to the public, the Office has taken steps to develop informational resources and has trained personnel in areas of customer service and assistance. The Office makes resources available in a variety of formats, including providing customer support over the phone or in person at public counters in Denver, Grand Junction, and Colorado Springs, and providing informational resources through its website and some physical documents and brochures.

Statute requires this audit to report on the public perception of the quality of the Office's performance related to workers' compensation hearings [Section 8-47-101(3)(d)(II), C.R.S.].

What audit work was performed and what was the purpose?

We performed the following audit work:

- Conducted a confidential survey of parties seeking to resolve workers' compensation disputes through the Office during Calendar Year 2011. We issued email surveys to all 431 parties involved in the almost 1,300 merit cases heard by the Office in Calendar Year 2011 for whom Legal Files contained adequate contact information. The total number of parties receiving a survey is less than the total number of cases because many of the attorneys surveyed provided legal services in multiple cases. Of the 431 parties surveyed, we received responses from 142 (a 33 percent response rate), as follows:
 - 67 responses from claimant (employee) attorneys.
 - 54 responses from responding party (employer) attorneys.
 - 21 responses from *pro se* claimants (employees).
- Interviewed Office staff responsible for providing customer assistance and support to the public, as well as Office management.
- Obtained and reviewed informational resources made available to the public, including the Office's and DOWC's websites, and brochures and pamphlets available at the Office's public counter in Denver.

The purpose of the audit work was to evaluate the public perception of the quality of the Office’s performance with respect to workers’ compensation hearings, and to identify factors associated with the Office’s performance—both with respect to judicial performance and customer service—that impact the overall satisfaction of parties seeking to resolve workers’ compensation disputes through the Office.

How were the results of the audit work measured?

As an alternative to civil litigation for individuals seeking resolution to workers’ compensation matters, an important measure of the Office’s success is whether the parties believe they have been treated fairly and professionally, and that the services provided by the State met their needs. Thus, public perception provides a critical indicator of success, both as it relates to the performance of ALJs and to the Office’s overall customer service. This is reflected in the Department’s Fiscal Year 2011 Strategic Plan, which includes the Office’s objective to “continually improve the perception and image of the Office of Administrative Courts through the Department’s annual survey of customer satisfaction.”

What did the audit work find?

Overall, our survey results indicated that both *pro se* claimants and claimant and respondent attorneys were generally satisfied with the Office’s services. In fact, our survey revealed that parties’ perception of Office services has generally improved since 2007, particularly as it relates to the performance and quality of communication with staff and ALJs. Parties also noted that the quality of resource materials has improved, including the Office’s website. As the following table shows, survey respondents, including attorneys and *pro se* claimants, consistently rated the Office between 3.0 and 4.2 on a five-point scale in all survey categories, indicating that they were “moderately satisfied” to “very satisfied” with the Office’s services. In only one category did results suggest moderate dissatisfaction with the Office’s performance—timeliness in scheduling hearings, where *pro se* parties rated the Office at 2.8. In general, both claimant and respondent attorneys rated the Office higher than *pro se* claimants.

Table 6: Public Perception Survey Results

Office of Administrative Courts Public Perception Survey Results¹			
Question	Claimant Attorney	Respondent Attorney	<i>Pro Se</i> Claimant
Professionalism of staff	4.14	4.15	3.95
Professionalism of ALJs	4.16	3.65	3.90
Knowledge of staff	4.17	4.12	3.70
Knowledge of ALJs	4.08	3.60	3.95
ALJs treated all parties with courtesy and respect	4.10	3.63	4.00
ALJs exhibited a professional demeanor	4.16	3.65	3.90
ALJs maintained appropriate control over the proceedings	4.17	3.58	4.00
Quality of communication with staff or ALJs	4.06	4.06	3.42
Quality of resource materials available	3.88	3.96	3.30
ALJs explained what was to be expected in the courtroom	3.84	3.61	4.10
Ease of navigation of Office website	3.86	3.58	3.30
Timeliness in scheduling hearing dates	3.74	3.78	2.80
Timeliness in issuing decisions	3.75	3.44	3.21
ALJ timeliness in ruling on pretrial motions	3.89	3.53	3.68
Overall satisfaction with Office	3.83	3.88	3.20
How well the process worked	3.84	3.78	3.05
Fairness of hearing process	3.27	3.24	3.05

Source: Independent survey conducted by Sjoberg Evashenk Consulting for parties appearing before the Office of Administrative Courts during Calendar Year 2011.

Note: ¹ The survey used a scale from 1 to 5, with 1 being “very dissatisfied” and 5 being “very satisfied.” A score of 1-2 represents “very dissatisfied,” a score of 2-3 “moderately dissatisfied,” a score of 3-4 “moderately satisfied,” and a score of 4-5 “very satisfied.”

Although, on average, parties are generally satisfied with the Office’s services, we found that some parties do not believe the information provided by the Office is sufficient to help parties understand the hearing process. Both *pro se* claimants and attorneys believed additional or more clearly articulated informational resources would better help them understand the hearing process and, thus, to be prepared. Dissatisfied respondents described the level of assistance as inadequate, and some found they were ill-prepared for the courtroom experience or were unclear as to the next step in the process. We also found that parties, particularly attorneys who regularly appear before the Office, identified additional concerns related to overall customer service, such as the timeliness of hearings and decisions, as described in Recommendation No. 1, and the availability of technological resources.

Why did the finding occur?

The issues identified occurred because of the following:

- **Presentation of Informational Resources.** The Office has improved and made a substantial amount of informational materials available to the public. Our survey results suggest parties' satisfaction with this information has improved since the Office of the State Auditor's 2008 performance audit. However, these informational materials can be voluminous and dense, making specific information difficult to locate and requiring parties to read through substantial amounts of material to find the particular information they are seeking. The Office reports that it is in the process of developing a streaming video presentation geared toward *pro se* claimants depicting what they can expect during the hearing process. Other administrative law agencies, both in Colorado and nationally, have developed similar videos and found them to be very useful and well-received by parties. The Office should continue its efforts to develop this tool. Further, although the Office includes all of its informational materials on its website, our review revealed multiple instances where hyperlinks to the information were broken or could not be accessed because multiple links overlapped with one another. We also noted various inconsistencies in the site layout and design for the various pages within the website, making the site difficult to navigate.
- **Lack of Technology Resources.** Our survey indicates that some parties believe an overall lack of technology resources available through the Office impacts how well the hearing process works. Survey respondents commented on the lack of online access to case files and the lack of wireless internet access in the courtrooms. Further, survey respondents were concerned with the fact that applications for hearings, motions, and other documents are required to be submitted to the Office in either hard copy (e.g., by mail or at the public counter) or via fax. Survey respondents noted particular concern regarding fax filings, which they said often fail or "time-out" before the Office receives the documents, and as a result, the Office may never receive them.

As discussed previously, in the 2012 Legislative Session, the General Assembly appropriated more than \$400,000 to the Office to implement a web-based version of Legal Files. The Office expects this system upgrade to be fully implemented in Fiscal Year 2013, and it will enable online case filing capabilities—an enhancement that will directly address some of the suggestions offered by survey respondents. The Office should also consider offering wireless internet access in the courtrooms. While these appear to be relatively minor service enhancements, survey results suggest steps to enhance information technology would have a positive impact on the quality of services provided and the public's perception of the workers' compensation hearing process overall.

- **Lack of Proactive Customer Assistance and Support.** The Office has not established a process to proactively reach out to parties who are less likely to be

familiar with the hearing process, or to facilitate the unique needs of *pro se* claimants. These parties may be more likely to feel at a disadvantage when the opposing party has significantly more experience. The Office has recognized this concern since at least the Office of the State Auditor's 2004 performance audit of the Office, and has taken some steps to address the needs of these parties. This includes the development of informational resources such as a non-lawyer's guide for workers' compensation claims, and working collaboratively with DOWC to facilitate a seamless service delivery. DOWC is primarily responsible for providing case management, mediation, and pre-hearing services, and the Office is responsible for conducting merit hearings. We believe that in addition to the seamless services provided by the Office and DOWC, the Office can enhance its approach to informing parties less likely to be familiar with the hearing process. For example, instead of making facilitator services available to parties and leaving it to the parties to initiate involvement, an alternative approach would be to proactively engage parties less likely to be familiar with the hearing process, particularly *pro se* parties, and offer an introductory "status conference," where they can meet with an ALJ prior to the actual hearing, resolve procedural questions, and be introduced to the hearing process. While parties' participation in this service would be voluntary, taking a more proactive approach may increase participation and be more likely to enhance familiarity with Office practices and hearing procedures. This could be performed in conjunction with already existing pre-hearing services offered by DOWC.

Why does the finding matter?

We recognize that while the Office is intended to provide a streamlined, lower-cost, adjudication process than parties would experience in District Court, adjudication processes are adversarial by nature, and not all parties appearing before the Office will conclude their proceedings with a positive experience. Further, as a process designed to facilitate the participation of claimants in the hearing process without the necessity of legal representation, the Office faces a challenge similar to many administrative law courts—to ensure a fair, easy-to-navigate, and effective hearing process, parties must understand how the process works and what to expect.

Without an understanding of each step—including Office policies, rules of procedure, and statutory requirements associated with each step—a *pro se* claimant may be at a real or perceived disadvantage. Claimants who are unlikely to be familiar with the administrative hearing process, and who choose to forego legal representation, may be at a disadvantage when presenting their case against employers or insurance companies, which are typically represented by experienced lawyers. This could impact the extent to which parties believe they received a fair and impartial hearing. If parties are not sufficiently informed or prepared for the hearing process, delays can result, decisions may not be based on all the relevant facts, and parties may feel that they are at a disadvantage during the hearing process.

Recommendation No. 3:

The Office of Administrative Courts should strengthen its customer service, including the informational materials and technology resources it provides, and ensure parties to workers' compensation cases can easily access the information by:

- a. Streamlining the presentation of information made available to the public, including continuing to develop streaming videos geared toward *pro se* claimants depicting what they can expect during the hearing process, and correcting broken links and formatting deficiencies on the Office's website.
- b. Implementing technological improvements, in consultation with the Governor's Office of Information Technology, such as an online filing system that would allow parties to file applications, motions, and other case-related documents online; as well as other technologies that enhance parties' accessibility to case information, such as wireless internet service while at the Office, including the courtrooms.
- c. Instituting a process to proactively engage parties less likely to be familiar with the hearing process, particularly *pro se* parties, in order to better inform them of the hearing process and the Office's rules and procedures.

Office of Administrative Courts Response:

- a. Agree. Implementation date: June 2013.

The Office has begun scripting video tutorials that should assist unrepresented parties in understanding the hearing process better. These videos will be available on the Office's website and will be informative and indexed. The Department of Personnel & Administration is currently working with various entities to reconfigure the website for all of its agencies, including the Office. This reconfiguration should assist with some of the deficiencies that previously existed. In addition, the Office is now performing a monthly review of its website to ensure that any broken links are fixed.

- b. Agree. Implementation date: June 2013.

The Office agrees with Recommendation No. 3(b). The Office is currently in the process of selecting a vendor to create a new e-filing system pursuant to a decision item that was granted last Legislative Session. In addition, the Office is moving to a new location in June of 2013 and is working with the Governor's Office of Information Technology to ensure that the new facility has wireless internet service in the courtrooms as well as videoconference capabilities in all courtrooms.

- c. Agree. Implementation date: June 2013.

The Office is in the process of creating a process in which the “judge of the day” (JOD) will meet with interested parties to discuss how cases progress. This may include both telephone meetings, in person meetings, as well as video advisements. For each unrepresented party, the Office will set a short prehearing conference to go over what is expected. In addition, the Office is going to work with DOWC to determine if such a presentation can be provided during DOWC prehearings as well.

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