

ADMINISTRATIVE LAW SECTION OF THE FLORIDA BAR
2010-2011 LONG RANGE PLANNING RETREAT

Wakulla Springs State Park
March 11-12, 2010

Thursday, March 11, 2010 – 4:00 pm to 6:00 pm (Wakulla Springs Lodge Terrace)

PAST ALS CHAIRS RECEPTION AND INPUT/VISIONING SESSION

Friday, March 12, 2010 – 10:00 am to 2:00 pm (Dogwood Pavilion Conference Room)

I. MEMBERSHIP

Focus on increasing membership, with particular focus on increasing
"young"/new/other lawyer membership

Agency contacts

Bar Sections - Health, Environmental and Land Use, Government
Lawyers, Public Interest, Elder Law, Appellate Practice (others?)

Florida Government Bar Association

Tallahassee Bar Association

Tallahassee Women Lawyers

Young Lawyers Division

Newsletter/Website

II. PUBLICATIONS

Executive Council Member authorship of Newsletter and/or Bar Journal
article or column OR recruiting authors for Newsletter and/or Bar Journal

III. WEBSITE

Website Updating

Content -- Newsletter, Uniform Rules of Procedure, Chapter 120, F.S.,
others?

Links -- JAPC website, Florida Rules, ELULS website, others?

Listserv?

IV. CONTINUING LEGAL EDUCATION

A. PAT DORE CONFERENCE

Tentative Dates -- Oct. 21-22, 2010 (1st choice), Oct. 14-15, 2010 (2nd choice); Oct. 28-29 (3rd choice)

Location options

Subcommittee

B. OTHER CLE PROGRAMS

Web-based short programs

Other programs -- Practice Before the Florida PSC?

V. UNIFORM RULES OF PROCEDURE AMENDMENT

Amendment to address statutory changes and to address other areas
glitches, clarification

Ad Hoc Committee

VI. LEGISLATIVE POSITION

Rollover of Current Legislative Positions -- See attached Exhibit "A"

VII. OFFICERS AND EXECUTIVE COUNCIL MEMBERS

Proposed Officers Slate for 2010-2011: Chair -- Cathy Sellers, Chair-Elect
-- Allen Grossman, Secretary -- Scott Boyd; Treasurer -- Amy Schrader

Executive Council Terms Expiring in 2010 -- Reappointment

Attendance at Executive Council Meetings - per Article V, Section 2(f)

Committees -- See attached Exhibit "B"

VIII. LAW SCHOOL OUTREACH

Report on what other sections -- e.g., ELULS, Health -- are doing re: law school-
related activities and programs

What do we WANT to do?

IX. SFGAP CERTIFICATION

Encouragement to seek certification

Specialty subcertification tracks – Discussion toward developing a section position -- See attached Exhibits "C" and "D"

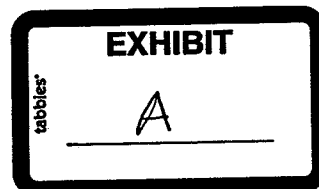
X. OTHER

2008-2010 Legislative Biennium

Administrative Law Section

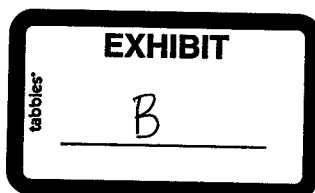
July 25, 2008

1. Opposes any amendment to Chapter 120, *Florida Statutes*, or other legislation, that undermines the rule-making requirements of the Administrative Procedure Act by allowing statements of agency policy without formal rule-making.
2. Opposes any amendment to Chapter 120, *Florida Statutes*, or other legislation to deny, limit or restrict points of entry to administrative proceedings under Chapter 120, *Florida Statutes*, by substantially affected persons.
3. Opposes exemptions or exceptions to the Administrative Procedure Act, but otherwise supports a requirement that any exemption or exception be included within Chapter 120, *Florida Statutes*.
4. Supports voluntary use of mediation to resolve matters in administrative proceedings under Chapter 120, *Florida Statutes*, and supports confidentiality of discussions in mediation; but opposes mandatory mediation and opposes imposition of involuntary penalties associated with mediation.
5. Supports uniformity of procedures in administrative proceedings under Chapter 120, *Florida Statutes*, and supports modification of such procedures only through amendment of or exceptions to the Uniform Rules of Procedure.
6. Opposes amendments to Chapter 120, *Florida Statutes*, or other legislation that limit, restrict, or penalize full participation in the administrative process without compelling justification.
7. Supports adequate funding of the Division of Administrative Hearings and other existing state administrative dispute resolution forums in order to ensure efficient resolution of administrative disputes.



**Administrative Law Section
Committees and Liaisons 2009 - 2010**

CLE Committee	Bruce D. Lamb, Chair Lisa S. Nelson Paul H. Amundsen Richard J. Shoop Wellington H. Meffert Cathy M. Sellers
TFB CLE Committee Liaison	Cathy M. Sellers
Council of Sections Liaison	Seann M. Frazier Alternate: Clark R. Jennings
Law School Liaison	Deborah K. Kearney, Chair T. Kent Wetherell Shaw P. Stiller
Legislation	Linda M. Rigot, Chair William E. Williams Justin M. Senior
Long Range Planning	Cathy M. Sellers, Chair Seann M. Frazier F. Scott Boyd W. David Watkins
Membership	Deborah K. Kearney, Chair
Publications	F. Scott Boyd, Chair
Newsletter Editor	Amy W. Schrader
Casenotes Editor	Mary F. Smallwood
Agency Snapshots Editor	Mary Ellen Clark
Bar Journal Column Editor	Paul H. Amundsen
Web Page	Daniel E. Nordby, Chair Seann M. Frazier
Public Utilities	Michael G. Cooke, Chair Cynthia B. Miller



Environmental and Land Use Law
Section Liaison

Francine M. Ffolkes

Health Law Section Liaison

Allen R. Grossman

Government Law Section Liaison

Clark R. Jennings

Board of Governors Liaison

Lawrence E. Sellers, Jr.

Young Lawyers Liaison

Christine D. Graves

FICPA Liaison

Mary Ellen Clark

APD Ad Hoc Committee

J. Andrew Bertron, Jr.

Finance/Budget Ad Hoc Committee

Clark R. Jennings

STATE AND FEDERAL GOVERNMENT AND ADMINISTRATIVE PRACTICE
2010 Certification Examination Test Specifications

I. PURPOSE OF THE EXAMINATION.

The purpose of the State and Federal Government and Administrative Practice Certification Examination ("Exam") is to determine whether the examinee possesses:

1. The substantive and procedural knowledge expected of an experienced state and federal government and administrative law practitioner; and
2. The skill to proficiently apply the knowledge to situations encountered by state and federal government and administrative law practitioners.

The examinee must pass a written examination that is designed to demonstrate the examinee's proficiency in the knowledge and skills required in state and federal government and administrative law justifying the representation of special competence in this practice area to the public and the legal profession. These skills are the ability to: identify pertinent issues; understand pertinent factual information; analyze issues through the application of knowledge and understanding of state and federal government and administrative law practice; and evaluate and propose resolution of the issues through the application of state and federal government and administrative law.

Not all subjects in the following list will appear on all exams.

II. CONTENT OF THE EXAM AND CONTENT ALLOCATION PLAN.

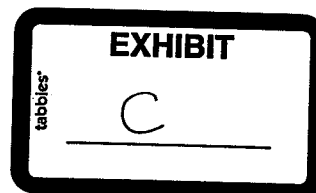
A. Content Topic List for the Exam

The following State and Federal Government and Administrative Practice topics **MAY** be tested on the Exam.

1. FLORIDA ADMINISTRATIVE LAW

A. Adjudication

1. Point of Entry
2. Standing



3. Proceedings Involving Disputed Issues of Material Fact
 - a. Choice of Forum
 - b. Division of Administrative Hearings Procedures
 - c. Evidentiary Matters
 - d. Burden of Proof
 - e. Record
 - f. Post-hearing Submittals
 - g. Recommended Orders
 - h. Final Orders
 - i. Timeframes for Issuance
 - ii. Standard of Review of Recommended Order
 - iii. Summary Hearings
 4. Proceedings Not Involving Disputed Issues of Material Fact
 5. Alternative Dispute Resolution
 6. Attorney's Fees
- B. Rulemaking and Rule Challenges
1. Authority to Adopt Rules
 2. Duty to Adopt Rules
 3. Rule Adoption Procedures
 4. Emergency Rulemaking

- 5. Rule Challenges
 - a. Types - Existing, Proposed, Unadopted, Emergency
 - b. Standing
 - c. Forum and Hearing Procedures
 - d. Standards for Invalidation
- 6. Legislative Oversight
- 7. Attorney's Fees
- C. Declaratory Statements
 - 1. Purpose and Limitations
 - 2. Standing to Request
 - 3. Hearing Procedures
- D. Competitive Procurement Disputes
 - 1. Time Limits
 - 2. Points of Entry
 - 3. Standing
 - 4. Purpose, Use and Types of Competitive Solicitation (Chapter 287 and Chapter 337, Fla. Statutes)
- E. Exceptions to and Exemptions from Applicability of APA
- F. Variances and Waivers
- G. Exhaustion of Administrative Remedies and Primary Jurisdiction
- H. Judicial Review of Agency Action
 - 1. Judicial Review under Section 120.68, F.S.
 - a. Requirements to Seek

- b. Final Orders and Nonfinal Orders
 - c. Standing
 - d. Forum and Venue
 - e. Time to Seek
 - f. Record on Review
 - g. Stay of Agency Action
 - h. Standards of Review
 - i. Attorney's Fees and Costs
 - 2. Judicial Review Outside of Chapter 120, F.S.
 - a. Extraordinary Writs
 - b. Circuit Court Jurisdiction
- I. Licensing
- J. Uniform Rules of Procedure
- K. Enforcement of Agency Action
- 2. FEDERAL ADMINISTRATIVE LAW
 - A. APA Adjudication
 - 1. Due Process Principles
 - 2. 5 U.S.C. §§ 554, 556, 557 and 558
 - 3. Type A Adjudication
 - 4. Type B Adjudication
 - Note: This subsection will not cover agency-specific proceedings.*
 - B. Federal APA Litigation/Scope of Judicial Review
 - 1. APA §706 Standards

2. Deference and *Chevron*, *Mead*, *Skidmore*
Chevron Two-Step
 3. Administrative Records
 - a. Content of Records
 - b. Privileges/Vaughn Index
 - c. De Novo Review
 - d. Adequacy of Agency Explanation
 - e. Appropriateness of Discovery
 4. Agency Delay/Unreasonable Delay Claims
 5. Federal Statute of Limitations
- C. Federal APA Litigation/Availability of Judicial Review
1. Federal Jurisdiction
 - a. Federal Question
 - b. Declaratory Judgments
 - c. Committed to Agency Discretion / Enforcement
 - d. Article III Standing
 2. Special Courts and Forums
 3. Federal Circuit Jurisdiction
- D. Federal APA Rulemaking
1. Authority
 2. Information Quality Act
 3. Supplemental Non-APA Requirements
 4. Notice and Comment

5. Logical Outgrowth
 6. Adequacy of Record/Reversal of Course
 7. Formal and Informal Rulemaking
 8. Non-legislative Rules/Guidance
- E. Attorney's Fees
1. Equal Access to Justice Act (28 U.S.C. § 2412)
 2. Fee Recovery Based on Statutory Citizen Suit Provisions
3. **FEDERAL PROCUREMENT LAW**
Note: Covers parallel topics to Chapter 120, Fla. Stat. procurement disputes.
- A. Contracts Disputes Act
1. De Novo Jurisdiction
 2. Appellate Jurisdiction
- B. Truth in Negotiations Act
1. Sole Source Contract Awards
 2. Justifying Cost and Pricing Data
- C. Bid Protests
1. GAO Bid Protest Rules
4. **FLORIDA CONSTITUTIONAL LAW**
Note: Covers language of Constitutional provisions and Florida Supreme Court decisions only.
- A. Executive Powers
- B. Legislative Powers

- C. Judicial Powers
- D. Privacy, Open Meetings and Public Records

5. FEDERAL CONSTITUTIONAL LAW

Note: Covers language of Constitutional Provisions and U.S. Supreme Court decisions only.

- A. Sovereign Immunity
- B. Federalism
- C. Separation of Powers
- D. Due Process
- E. Equal Protection
- F. Bill of Rights

6. FLORIDA AND FEDERAL GOVERNMENT LITIGATION

- A. Challenges to Statutes
 - 1. Pleading requirements
 - 2. Jurisdiction and venue
 - 3. Standing
 - 4. Presumptions accorded statutes
 - 5. Due Process challenge
 - 6. Equal Protection challenge
 - 7. Title defect challenge
 - 8. Single-subject challenge
- B. Florida Tort Claims
 - 1. Conditions precedent to filing suit
 - 2. Jurisdiction and venue
 - 3. Pleading requirements
 - 4. Defenses; sovereign immunity
 - 5. Proprietary / Governmental
 - 6. Attorney's fees and costs

C. Federal Tort Claims

1. Conditions precedent to filing suit
2. Jurisdiction and venue
3. Pleading requirements
4. Defenses; sovereign immunity
5. Proprietary / Governmental
6. Attorney's fees and costs

D. 1983 Civil Rights

Note: Covers language of statute and U.S. Supreme Court Cases only.

1. Pleading requirements--sufficiency of allegations
2. Elements of a cause of action
3. Jurisdiction and venue
4. Status/capacity of Defendant(s) / suable entity
5. Defenses and Immunities
6. Attorney's fees and costs

7. FLORIDA AND FEDERAL ETHICS, SUNSHINE, AND PUBLIC RECORDS

- A. Chapter 112, Fla. Stat. (Part III)
- B. Chapter 119, Fla. Stat.
- C. Chapter 286, Fla. Stat.
- D. Freedom of Information Act --5 U.S.C. §552
- E. Federal Advisory Committee Act -- 5 U.S.C. app. II.
- F. Government in the Sunshine Act -- 5 U.S.C. §552b

B. Content Allocation Plan

State and Federal Government and Administrative Practice Certification Exam			
Multiple Choice Question Content Allocation Plan			
100 Questions (50% of Exam)			
Topic	Florida	Federal	Description
APA (50%)	30	20	Coverage of all Florida Administrative Law topics listed in Content Topic List. Coverage of all Federal Administrative Law topics listed in Content Topic List, including Article III Standing
Constitutional Law (13%)	8	5	Federal: Sovereign Immunity; Federalism; Separation of Powers; Due Process; Equal Protection; Bill of Rights; Florida: Executive Powers; Legislative Powers; Judicial Powers; Privacy, Open Meetings, and Public Records
Ethics, Sunshine, Public Records (13%)	8	5	Chapters 112 (Part III), 119, and 286, Florida Statutes; Federal Freedom of Information Act; Government in the Sunshine Act; Federal Advisory Committee Act
Government Litigation (13%)	8	5	Challenges to Statutes; Florida Tort Claims Act Federal Tort Claims Act; Civil Rights Actions under 42 U.S.C. §1983
Attorney's Fees (7%)	4	3	Attorney's Fees under Chapter 120, F.S.; Florida Equal Access to Justice Act; Federal Equal Access to Justice Act; Fee Recovery Based on Statutory Citizen Suit Provisions
Public Contracts (4%)	2	2	Chapter 120 Competitive Procurement Disputes; Federal Procurement Law
Totals	60	40	60% Florida Law, 40% Federal Law; 50% Administrative Law, 50% Non-Administrative Government Law

State and Federal Government and Administrative Practice Certification Exam		
Essay Question Content Allocation Table		
100 Points (50% of Exam)		
<i>Topic</i>	<i>Weight</i>	<i>Description</i>
Florida Administrative Adjudication and Rulemaking and Federal Administrative Adjudication and Rulemaking	50% of Essay; 25% of Total Exam	Adjudication under Florida Administrative Procedure Act; Adjudication under Federal Administrative Procedure Act; Rulemaking and Rule Challenges under the Florida Administrative Procedure Act; Rulemaking and Rule Challenges under Federal Administrative Procedure Act; Related Constitutional Law Issues
Florida Constitutional Law; Federal Constitutional Law; Florida and Federal Government Litigation	50% of Essay; 25% of Total Exam	Florida Constitutional Law, Federal Constitutional Law, and Florida and Federal Government Litigation topics listed in Content Topic List for the Exam

~~III. DESCRIPTION OF THE EXAM.~~

- ~~A. Format and Mandatory/Optional Questions. The Exam will cover Florida and Federal Government and Administrative Law topics. The Exam will consist of 100 multiple choice questions and 2 essay questions. The multiple choice questions are worth 1 point each, for a total of 100 points. The essay questions are worth 50 points each, for a total of 100 points.~~
- ~~B. Time Period for Law Covered on Exam. The Exam will cover the law for the time period through up to 90 days prior to administration of exam.~~
- ~~C. Relative Emphasis of Florida and Federal Law. Approximately 60% of the Exam will cover Florida topics, and approximately 40% of the Exam will cover Federal topics. Approximately 50% of the Exam will cover Administrative Law topics, and approximately 50% will cover other Government (non-Administrative) Law topics.~~

Cathy Sellers

From: Alexzina M Jackson [AJackson@flabar.org]
Sent: Wednesday, March 03, 2010 10:00 AM
To: mikealderman@flhsmv.gov; silvia.alderman@akerman.com; renee_alsobrook@doh.state.fl.us; pamundsen@ammolaw.com; E.Bayo@mgfblaw.com; doug.beason@dep.state.fl.us; alison_becker@myfloridalegal.com; jberman@infantinoberman.com; diana.boock@myfloridalegal.com; boyd.scott@leg.state.fl.us; cecilia.bradley@myfloridalegal.com; kburns@sfwmd.gov; juddchapman@flhsmv.gov; mchumbler@carltonfields.com; bob_cohen@doah.state.fl.us; michael.cooke@ruden.com; stephanie.daniel@myfloridalegal.com; ej_davis@doah.state.fl.us; edelaparte@dgfirm.com; tad@delegal.net; gearly@lawfla.com; donna_erlich@doh.state.fl.us; charles.fahlbusch@myfloridalegal.com; francine.folkes@dep.state.fl.us; wflowers@llw-law.com; jfumero@rsbattorneys.com; tina.furlow@myfloridalegal.com; W.Furlow@mgfblaw.com; julie.gallagher@akerman.com; mglazer@ausley.com; a.grossman@mgfblaw.com; lee.ann.gustafson@myfloridalegal.com; khetrick@fhba.com; betsy.hewitt@dep.state.fl.us; Eleanor_Hunter@doah.state.fl.us; jenninc@doacs.state.fl.us; rodney_johnson@doh.state.fl.us; fklegal@hotmail.com; laked@ahca.myflorida.com; bruce.lamb@ruden.com; clannon1978@gmail.com; ellenleo@aol.com; CLINTON@SFWMD.GOV; Douglas.MacInnes@myfloridalegal.com; dmanson@floridah2olaw.com; smartin@sfwmd.gov; kmartinson@sarasotalawfirm.com; stephen.mathues@dca.state.fl.us; frankm@hgslaw.com; emcarthur@radeylaw.com; Joe.Mellichamp@myfloridalegal.com; K.Metzger@mgfblaw.com; millere1@doacs.state.fl.us; gmiller@broward.org; tmiller@radeylaw.com; mike_palecki@apd.state.fl.us; jim.peters@myfloridalegal.com; James_Peterson@doah.state.fl.us; lphillips@gunster.com; porterl@ahca.myflorida.com; lynne.quimby-pennock@flofr.com; jim.richmond@dca.state.fl.us; rrigs@carltonfields.com; michael.riley@gray-robinson.com; Rimesjohn@aol.com; krizzar@sfwmd.gov; jrolon15@gmail.com; Colin.Roopnarine@perc.myflorida.com; mike_ruff@doah.state.fl.us; nona.schaffner@dep.state.fl.us; fself@lawfla.com; Cathy Sellers; larry.sellers@hklaw.com; angelia.sheridan@myfloridalegal.com; mary.smallwood@ruden.com; playgolwell@yahoo.com; Donna Holshouser-Stinson; DougSunshine@flhsmv.gov; johnterrel@yahoo.com; eric.tilton@myfloridalegal.com; kvandendooren@comcast.net; george.waas@myfloridalegal.com; watkins@floridacourts.com; Jon.Whitney@myfloridalegal.com; wwilliams@gray-robinson.com; wingo@ufl.edu; Patricia_wright@dcf.state.fl.us; troy.kishbaugh@gray-robinson.com; Paul H. Chipok; fraziers@gtlaw.com; jbennett@pinellascounty.org

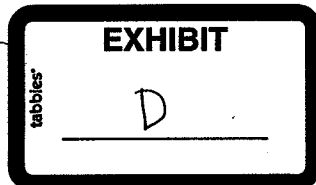
Subject: SFGAP Board Certification - The Concept of Specialty Tracks

Greetings Everyone:

The correspondence below comes to you from the State and Federal Government & Administrative Practice (SFGAP) Certification Committee. As the committee's staff liaison, please direct any comments, questions or concerns to me and I will relay them appropriately.

Thank you,

Alexzina M. Jackson
 Certification Specialist- The Florida Bar
 651 E. Jefferson Street
 Tallahassee, Fl. 32399
 (d) 850.561.5768
 (f) 850.561.5660
<http://www.floridabar.org/certification>



3/8/2010

The State and Federal Government and Administrative Practice (SFGAP) Certification Committee is considering whether to recommend that The Florida Bar create certification in two sub-specialties within the purview of this committee: State and Federal Government Litigation and State and Federal Administrative Law. This note provides some background information on this proposal and solicits your thoughts on this concept.

From its inception, the SFGAP committee has been responsible for a very broad area of certification. In particular, it has become clear that we have two general practice areas. Attorneys who practice State and Federal administrative law are focused primarily on rulemaking, licensing, and administrative hearings and have had minimal experience with the law relating to sovereign immunity, government tort claims acts, or civil rights litigation that are generally within the domain of State and Federal Government litigators, and vice versa. Our examination has of course covered both of these broad areas to the extent possible.

The number of applicants for certification by examination has not been nearly as high as was hoped. Initially, we had a large number of experienced counsel who were exempted from the examination based upon substantial involvement criteria, but the number of examination applicants has always been low. We believe this, too, is directly related to the fact that there are very few attorneys whose practice covers both of these areas. Conversations with those who have taken the exam, as well as with those who have not applied, suggest that attorneys are understandably reluctant to take an exam in subjects outside of their experience, and likewise do not wish to hold themselves out as having special expertise in an area in which they do not practice.

We believe that the creation of sub-specialties would address all of these related problems. Creation of certifications in State and Federal Administrative Law and State and Federal Government Litigation would allow us to maintain the rigorous examination standards expected for board certification without deterring applicants. Creation of these sub-specialties would more closely align certification with existing areas of legal practice in the state, rather than trying to address the entirety of the practice area. Identification of these sub-specialties would better serve the public in search of expert representation and more specifically identify specialty certification in relation to the actual practice of that certified attorney. Finally, our hope is that it will also increase the number of attorneys applying for certification.

Other options, such as allowing voluntary self-designation, making the exam less rigorous, or creating an examination with "core" and optional "sub-specialty" questions without changing the actual certification awarded, do not seem to address all of the interrelated concerns outlined above. The committee therefore believes that its objective to increase the number of board certified attorneys in State and Federal Government and Administrative Practice while maintaining rigorous qualifications in meaningful practice areas can only be met through Bar approval of sub-specialties in State and Federal Government Litigation and State and Federal Administrative Law.

The committee is aware that such a change will require a comprehensive evaluation of our committee rules, practice standards, peer review, and examinations, and we would not be expecting to have any changes in place prior to the 2012 examination cycle. At this point, however, we feel it appropriate to advance the concept of sub-specialty certification for comment. Please contact Alexzina Jackson, SFGAP Certification Committee Staff Liaison at the Florida Bar, to express your support, comments, or concerns.

Sincerely,

Honorable Charles A. Stampelos, Chair
State and Federal Government and
Administrative Practice Certification Committee