Administrative Law Section Newsletter

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From the Chair

by Dan R. Stengle

The Administrative Law Section is readying to present its most important production of the year, the Year 2000 Pat Dore Administrative Law Conference. This year's Pat Dore Administrative Law Conference will take place at the Turnbull Conference Center, FSU Center for Professional Development, on Thursday and Friday, April 13 and 14, 2000.

It is, of course, fitting that this significant conference is named in memory of the much-beloved Professor Pat Dore of the Florida State University College of Law. In addition to being a highly regarded expert in administrative law, Pat was active in the work of the Administrative Law Section, and particularly in the Section's Administrative Law Conference. As when Pat helped shape the weighty agendas of the Administrative Law Conference, the Pat Dore Conference is designed to engage a discussion at a sophisticated level of topical and cutting-edge administrative law issues. The tremendous success of the Conference through the years has been a tribute to not only the hard work of its organizers and speakers, but also, the meaningful participation by administrative law practitioners — both public and private sector — and others with keen interest in the field of administrative law.

This year's Pat Dore Conference will take place during the height of the 2000 Legislative Session. By the time of the Conference, we will know whether legislation impacting the Administrative Procedure Act has a chance of passage or has withered on the legislative vine. As this issue goes to press, legislation is being planned that would shorten administrative time frames, revise the summary hearing process, increase attorney fee limits under the Florida Equal Access to Justice Act, and require party participation in mandatory pre-hearing settlement conferences. These and other issues under consideration by the 2000 Legislature will set the stage for topical and timely discourse among the Pat Dore Conference participants.

The lawmaking role of the Legislature will not be the only topic of legislative interest, however. Legislative oversight of the Administrative Procedure Act has been a particularly thorny issue since the Administrative Procedure Act was adopted in 1974. To provide continuous legislative review of the rulemaking efforts of agencies, the Legislature created the Joint Administrative

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Department of Revenue v. Novoa: Will "Rights" Replace "Interests" as the Standard For Obtaining Relief Under the APA?

by Chris Bryant

The 1974 revision of Florida's Administrative Procedure Act, Chapter 120, sought to significantly change the framework for the relationship between the government and the governed. The revised Act

> presented a more streamlined means whereby individuals who felt their substantial interests were being affected by agency action could challenge the agency action in administrative proceedings.[1]

Recent judicial and administrative decisions, however, appear to limit the availability of APA remedies to situations in which a person's *rights*, rather than just *interests*, are affected or determined.

In *Department of Revenue v. Novoa*, 745 So. 2d 378 (Fla. 1st DCA 1999), the First DCA considered a DOR policy which prohibited DOR employees from filling out state or

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Procedures Committee as a check on the exercise of legislative authority delegated to the agencies. Has the Joint Administrative Procedures Committee served as an effective check on delegated legislative authority? Are there other models for day-to-day legislative oversight of agency rulemaking that ought to be considered?

Legislators have more recently bristled at a number of court decisions that were perceived as giving too much deference to agency rulemaking and agency interpretations of delegated legislative authority. Increasing numbers of rules led to the much-ballyhooed, and perhaps just as much-maligned, gubernatorial rule reduction effort of recent years. In response to these related phenomena, the Legislature adopted restricted statutory rulemaking standards, and mandated rule review and reporting. What are the perceptions of these efforts by administrative practitioners, both public and private? Have these efforts hampered the regulatory machinery that protects the public, or have they effectively curbed regulatory excesses by executive agencies? Perhaps you are among those who believe that these restrictions on the exercise of agency rulemaking authority have had little effect. Plan to participate in what is sure to be a lively discussion at the Pat Dore Conference.

A number of agencies have used settlement processes informally to mediate disputes. Other agencies have been given explicit authority or directives in substantive statutes to mediate disputes. Chapter 120 currently provides that each announcement of agency action that affects substantial interests must advise whether mediation is available to resolve a dispute arising from the action. The Conflict Resolution Consortium of the Florida State University has been conducting a pilot project on agency administrative dispute resolution. As part of its pilot project, the Consortium has surveyed administrative practitioners, both public and private. What did we learn as a result of the pilot project? Have agencies embraced administrative dispute resolution, or have they instead clung to the more traditional hearing route in administrative cases? At the Pat Dore Conference, we will hear from those who conducted, and from those who participated in, the Consortium's pilot project.

The experiences of particular agencies should prove enlightening at the Pat Dore Conference, as well. Of special interest should be a number of topics relating to issues pending or planned for the Year 2000 Florida Legislature.

What changes will the Legislature make to the administrative processes by which we manage growth in this dynamic state? We will hear from the Department of Community Affairs and those affected by that department's actions at the Pat Dore Conference.

The voters in 1998 approved a constitutional amendment creating the Fish and Wildlife Conservation Commission. A large measure of the debate over the merging of the fresh water and salt water regulatory machinery concerned due process and the application of the Administrative Procedure Act to the constitutionally-created agency, which uniquely exercises both lawmaking and executive functions. The Fish and Wildlife Conservation Commission was directed to report to the 2000 Legislature on its efforts to provide due process for those affected by decisions of the Commission. What has the Commission done, and what did it report to the 2000 Legislature?

These and other issues will make for a lively and informative Year 2000 Pat Dore Administrative Law Conference. As it has been in the past, your participation is key to the success of this year's Pat Dore Conference. Bring a friend. See you there.

Administrative Law Essay Competition

DON'T WRITE OFF the Pat Dore Administrative Law Essay Competition. Packets of information have been provided to all of the Florida law schools, inviting their students to submit articles on the subject of Florida administrative law. We are hoping to have a good sampling of articles for this first competition. To assure that we do, you can be of enormous help.

Many of you stay in contact with your law school and many of you have developed a relationship with law professors who teach administrative law courses. Please mention to them that you would appreciate anything they could do to enhance interest in the writing competition. Perhaps you could pass on issues of merit that would prompt a student to write or encourage professors to suggest interesting issues to their students to encourage participation. The prizes are substantial: $1400 for first place and $500 and $300 for second place and honorable mention, respectively.

In this era of the push for professionalism, law schools are looking for ways to better interact with the practicing legal community. Here is one way for you to introduce administrative law professors to our Section's programs.

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federal tax forms for private parties during their non-working hours. The prohibition applied regardless of whether the private party compensated the DOR employee. The policy was contained in a "Code of Conduct for Department Employees," as well as in an internally-distributed publication entitled "Disciplinary Procedures and Standards," but the policy was not adopted as a rule of the Department.

Several tax auditors employed by the Department challenged the policy as an unpromulgated rule, contending that it interfered with their desire to prepare federal income tax returns for hire and on a pro bono basis in their off-duty time. They sought to perform such services only for persons who were not required to file tax returns with the State of Florida, and who were not required to pay court-ordered child support, which might be subject to collection by the Department, thus avoiding any real or potential conflict of interest.

The Department countered that the policy was an "internal management memorandum" (hereinafter, "IMM") which is expressly excluded from the statutory definition of a rule in Chapter 120. While a rule is defined as an agency statement of general applicability which implements, interprets, or prescribes law or policy, Section 120.52(15)(a) excludes IMMs "which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum."

The assigned DOAH administrative law judge rejected the Department's argument and found the policy to be an unadopted rule.[2] There was little dispute that the Department's policy was a statement of general applicability which implemented, interpreted, or prescribed law or policy "concerning the substance and procedure surrounding after-hours employment . . . in the area of preparation of federal tax returns for hire." Nor was it disputed that the policy was implemented on a consistent basis with the effect of law. The ALJ concluded that the policy affects the "private monetary interests" of the employees, and thus did not qualify for the statute's IMM exception.

On appeal, the First District Court of Appeal reversed the ALJ's determination that DOR's policy did not qualify as an IMM. The Court agreed that the policy has an impact on DOR employees by preventing them from earning additional income preparing tax returns for private parties. However, the Court discounted this impact by stating that the employees "have not shown that they have a *protected right* to prepare tax returns for additional compensation in their off-duty hours." (Emphasis added.)

The Court began its analysis with a discussion of "the nature of governmental power vested in the Department of Revenue," and stressed the need to distinguish the Legislature's ability to control, through Chapter 120, a state agency's legislative act of rulemaking from the agency's fulfillment of "executive branch functions."[3] Despite this unnecessary rumination on the constitutional separation of powers, the Court itself engaged in the most time-honored means of violating the doctrine: judicial legislating. The Court replaced the words "private interests" in the statutory IMM exception with the words "protected rights." The Court has now held that an agency policy which affects private interests might still qualify as an IMM, exempt from rulemaking requirements, unless the affected "private interests" rise to the level of "protected rights."

Only a year earlier, the Court had considered two other cases concerning non-rule agency policies, and in each case rejected the agency's argument that its statement was merely an IMM. In *Department of Highway Safety and Motor Vehicles v. Schluter*, 705 So.2d 79 (Fla. 1st DCA 1998), the Court affirmed in part and reversed in part a DOAH final order determining that each of six policies of the Florida Highway Patrol constituted unadopted rules. The policies all concerned officers under investigation for employee misconduct. Three of the policies, addressing duty assignments of such officers, contact between the officers and potential witnesses, and the off-duty employment of the officers, were found by the Court not to constitute unadopted rules because they applied only under "certain circumstances;" as a result, they could not be considered "statements of general applicability," and thus did not meet the statutory definition of a rule.

However, the Court agreed that the remaining three policies at issue in *Schluter* constituted unadopted rules. These policies addressed how the Department would conduct its investigation: denying access to investigatory records unrelated to the complaint, disclosing to interviewed witnesses the identity of the officer, and refusing to allow the officer's legal representative to comment on the record or advise the officer during the Department's interviews of the officer. The Court further concluded that these policies did not qualify for the IMM exception because they affected the private interests of officers under investigation.[4]

The Court cited "the officer's property right to continued employment" as evidence of the existence of a private interest. This "property right" or "property interest" was in turn supported by citations to the statutory Police Officer's Bill of Rights (Sections 112.531 through 112.535, Fla. Stat.) and to a statutory provision that provides that officers may only be disciplined for cause.

Similarly, in *Reiff v. Northeast Florida State Hospital*, 710 So.2d 1030 (Fla. 1st DCA 1998), the Court held that the bylaws of a state hospital which prohibited a class of licensed health care professionals (psychologists) from obtaining certain privileges and rights of staff membership constituted an unadopted rule. The Court in this case rejected the DOAH ALJ's conclusion that the hospital bylaws qualified for the IMM exception; the ALJ stated that the bylaws did not affect the challenger's "private interests."[5] As in *Schluter*, the Court noted the existence of a psychologist's "legal right" to perform professional duties. This legal right has statutory bases in the Psychology Practice Act (Chapter 490), as well as in Section 395.0191, which prohibits licensed

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hospitals from discriminating against classes of licensed health care professionals in assigning clinic privileges.

In *Novoa*, the Court purported to distinguish *Schluter* and *Reiff*:

> [W]e emphasize that our holdings in *Schluter* and *Reiff* are limited to situations in which the agency policy violates a protected right. According to Section 120.52(15)(a), an agency statement affecting a "private interest" is not an internal management memorandum. The interest referred to in the statute is not a business opportunity, as in the present case, but an interest protected by a legal right.

745 So. 2d at 383.[6] Although the *Schluter* and *Reiff* decisions both cited to certain statutorily-created rights as evidence of a party's private interests, neither decision stated that the existence of such "rights" was necessary to establish a protected interest. The *Novoa* court has simply misapplied *Schluter* and *Reiff*. The *Novoa* court failed to recognize that Chapter 120 itself creates certain rights based on the existence of *interests*. If a person possesses a private interest which is affected by an agency statement of general applicability, then that person has a right to have such agency statement subjected to rulemaking.

Chapter 120 does not require that a person's "protected rights" be threatened in order for the person to pursue or obtain available administrative remedies. The APA speaks in terms of "substantial interests," not rights. For example, any person "having substantial interest in an agency rule" may petition an agency to initiate rulemaking.[7] A "substantially affected" person may challenge a proposed, existing, or unadopted agency rule.[8] A party whose "substantial interests" are determined by an agency may petition for a Section 120.57(1) evidentiary hearing involving disputed factual issues (formerly known as a "formal hearing"), or a Section 120.57(2) hearing in which there are not disputed issues of fact (formerly an "informal hearing").[9] None of these statutory provisions require that the petitioning party possess separately-conferred statutory *rights*.

This distinction is emphasized by the very definition of "party" found in Chapter 120. Section 120.52(12) defines party to include:

> (a) Specifically named persons whose *substantial interests* are being determined in the proceeding.
>
> (b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose *substantial interests* will be affected by proposed agency action . . . .

(Emphasis added.) In paragraph (b) of this definition, the Legislature has clearly recognized the existence of constitutional and statutory rights as bases for standing in an administrative proceeding, but has also identified when an *alternative* basis for standing "substantial interests" are determined or affected by agency action.[10]

In an often-cited and comprehensive law review article devoted to standing in administrative proceedings, the late Professor Dore specifically commented on this point in criticizing a decision of the Florida Supreme Court denying standing to a third party in a Public Service Commission proceeding:

> [T]he court seems to equate "substantial interests" with "legally recognized interest." This is especially troublesome in light of the legislative history and multifaceted definition of "party." The phrase "substantial interests" was chosen deliberately to make adjudicatory proceedings available to persons whose important or significant interests were affected or determined by agency action *whether or not those interests were recognized technically as protected legal rights*.

Patricia A. Dore, *Access to Florida Administrative Proceedings*, 13 Fla. St. U.L. Rev. 965, 1084 (1986) (emphasis added) (discussing *ASI, Inc. v. Florida Public Service Commission*, 334 So.2d 594 (Fla. 1976)).

The Legislature knows the difference between rights and interests. The Legislature specified that *either* a constitutional right, statutory provision, agency rule, *or* "substantial interest" is sufficient to confer party status. There is no reason to believe that an IMM need not be adopted as a rule unless it affects a "right;" the statute only requires that the memorandum affect a "private interest" (or, alternatively, that it affects a plan or procedure important to the public) before a rulemaking obligation arises. If a "substantially affected" person has standing under Section 120.56(4) to seek a determination that an agency statement constitutes an unadopted rule, that standing would provide only an illusory remedy if the agency issuing the statement could defend its policy as an IMM if the person's "substantially affected" interest does not rise to the level of a "protected right."

Judge Robert Benton dissented from the *Novoa* decision, asserting that the Court's recent decisions in *Reiff* and *Schluter* mandated a conclusion that the DOR policy did not qualify as an IMM precisely because it affects private interests:

> The agency policy in question here curtails certain outside employment, including remunerative employment. We have consistently held agency policy affecting the pecuniary interests of agency employees to be outside the internal management memorandum exception.[11]

Judge Benton noted that he had dissented in both *Reiff* and *Schluter*, but that *stare decisis* required that the DOR policy be declared an unadopted rule and not an IMM.

The *Novoa* decision is not an isolated instance of the bar being raised for challenges to agency action. A recent DOAH final order upheld a rule of the Florida Housing Finance Corporation, a recently-privatized state agency, which prevented private developers competing for a limited pool of federal tax credits for low income housing projects from challenging the selection of their competitors' projects.[12] *Regency Gardens Apartments, Ltd. v. Florida Housing Finance Corporation*, DOAH Case No. 99-3179RX (DOAH Final Order October 18, 1999). The ALJ's crucial conclusion determining that developers were not entitled to challenge their com-

petitors turned on the absence of a right to a tax credit:

> No applicant has a right to a tax credit, and no applicant who is denied a tax credit will be denied the right to build its proposed development by FHFC.

Final Order at paragraph 34. The ALJ viewed this latter point as distinguishing the tax credit situation from those situations in which mutually-exclusive applications were submitted for a license needed to conduct an activity, such as the federal government's assignment of a radio frequency[13] or the state's issuance of a certificate of need for a health care service.[14] Unlike the FCC or the certificate of need program, "FHFC does not determine which development projects may go forward and which will not be permitted to go forward." Final Order at paragraph 34. Rather, FHFC only determines which proposed projects will receive federal income tax credits, which can be sold to raise funds for the project development.

Clearly, however, an applicant for tax credits has a substantial *interest* in receiving tax credits, as the proceeds of the sale of such credits reduce the amount of money the applicant must raise from conventional loans, grants, or contributions to construct the low income housing project. The very nature of the project, together with FHFC rules requiring the set aside of minimum percentages of apartments within the project for low income residents at capped rental rates,[15] typically means that the project could not be financed solely through conventional means because anticipated rental revenue would not service conventional debt; often such projects simply will not get built without some form of public assistance. Applicant A's substantial interests are affected because the scoring and selection of competing applications can result in there being no tax credits left to award to Applicant A, and Applicant A's project does not get built.

The *Regency Gardens* final order does not cite to the *Novoa* decision, which had been issued only days before *Regency Gardens*.[16] It would be premature to declare that these cases constitute a trend, but practitioners should be aware that there is now judicial precedent for the proposition that merely having one's interests affected is not sufficient to impose on state agencies an obligation to adopt agency policies as rules; one must show that "rights" conferred by a substantive statute — other than Chapter 120 — are affected. Whether this interpretation spreads to other provisions of Chapter 120 that speak of a party's "interests" remains to be seen. Such an interpretation could seriously undermine the effectiveness of Chapter 120 by limiting the availability of the Act's "impressive arsenal of varied and abundant remedies,"[17] and it is not supported by either the language or the intent of Chapter 120.

Endnotes

[1] *Roberson v. Florida Parole and Probation Commission*, 444 So.2d 917, 919 (Fla. 1983).

[2] *Novoa v. Department of Revenue*, 20 FALR 4017, DOAH Case No. 98-1763RU (DOAH Final Order, July 9, 1998).

[3] The Court stated that, because rulemaking "is a legislative function, not an executive function," the legislature has exclusive authority to determine the extent to which an agency may adopt rules. The Court further opined that whether DOR's policy "meets the definition of a rule in Section 120.52(15) depends, in a broad sense, on the kind of governmental power the Department purports to exercise." The Court noted that it "must protect the legislative power to regulate rulemaking," but "must also ensure that the definition of a rule is not applied so broadly that it includes executive branch functions within its scope." This civics lesson was unnecessary for deciding this case, as will be discussed further.

Moreover, discussions of the existence of separate and inherent "executive branch powers" may unfortunately serve as a means for state agencies to avoid rulemaking obligations by characterizing actions as "executive branch" functions rather than legislatively-delegated functions. This exercise seems to run counter to the established case law that state agencies are creatures of statute and have only such powers as are delegated to them by the legislature. See, for example, *Schiffman v. Department of Professional Regulation*, 581 So.2d 1375, 1379 (Fla.1st DCA 1991); *Lewis Oil Co. v. Alachua County*, 496 So.2d 184, 189 (Fla. 1st DCA 1986); and *Grove Isle Ltd. v. State Department of Environmental Regulation*, 454 So.2d 571, 573 (Fla. 1st DCA 1984) and cases cited therein. The *Grove Isle* decision characterizes these principles as "a cornerstone of administrative law."

[4] Judge Benton wrote a concurring and dissenting opinion in which he opined that none of the challenged statements constituted an unadopted rule, and that the final order should be reversed *in toto*. Judge Benton argued that none of the policies was truly an agency statement of general applicability "intended to have the force and effect of law" and noted that none of the policies had been reduced to writing other than in the prehearing stipulation in Officer Schluter's challenge; the majority opinion expressly rejected this logic. Judge Benton expressly declined comment on the "internal management memorandum" exception, as he found it unnecessary since, in his view, the policies didn't qualify as rules.

[5] The ALJ had also determined that the challenger, Dr. Reiff, lacked standing to challenge the bylaws since they did not deprive him of a "property right;" at most, according to the ALJ, obtaining clinical privileges might enhance Dr. Reiff's level of professional knowledge and expertise, and might impact Dr. Reiff's "right" to seek a raise in salary. (The Court reversed the conclusion that Dr. Reiff lacked standing.) The ALJ drafted his Final Order to reach the merits of the claim of existence of an unadopted rule, assuming that standing existed.

[6] The majority opinions in both *Schluter* and *Reiff* were authored by Judge Richard Ervin, with Judge Marguerite Davis concurring and Judge Robert Benton filing separate written opinions (concurring and dissenting in *Schluter*, dissenting in *Reiff*). The *Novoa* decision, in which the holdings of *Schluter* and *Reiff* are explained (and perhaps limited), was authored by Judge Philip Padovano, with Judge Davis concurring and Judge Benton dissenting with opinion.

[7] Section 120.54(7).

[8] Section 120.56(2)(a), and (4)(a).

[9] Section 120.569(1).

[10] "Agency action" is separately defined in Chapter 120 to encompass both rules and orders; that is, both agency statements of general applicability, and the application of those agency statements to particular persons or situations.

[11] 745 So. 2d at 385, citing *Florida State University v. Dann*, 400 So.2d 1304 (Fla. 1st DCA 1981) and *State Department of Administration v. Stevens*, 344 So.2d 290 (Fla. 1st DCA 1977).

[12] Competing proposals for FHFC's distribution of federal income tax credits are rank ordered based on total numerical scores arrived at by evaluating the feasibility and desirability of each proposed low income housing project. Subject to satisfying FHFC goals for distributing credits to small, medium, and large county groups, tax credits are allocated starting with the highest ranked projects, proceeding down the list until the available amount of tax credits are exhausted.

[13] *Ashbacker Radio Corporation v. Federal Communications Commission*, 326 U.S. 327 (1945). The *Ashbacker* doctrine recognizes that competing bona fide applicants for a single government-issued license or approval are entitled to a hearing on the applications before one is granted to the exclusion of the other.

[14] *Bio-Medical Applications of Clearwater, Inc. v. Department of Health and Rehabilitative Services*, 370 So.2d 19 (Fla. 2d DCA 1979) and *Bio-Medical Applications of Ocala, Inc. v. Office of Community Medical Facilities*, 374 So.2d 88 (Fla. 1st DCA 1979). The Second District Court's *Bio-Medical* decision expressly applied the *Ashbacker* doctrine (see note 13 of this article) to certificate of need proceedings based on the mutual exclusivity of the competing applications and the need for

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fair play. The First District Court's *Bio-Medical* opinion cited its sister court's decision, but also noted Chapter 120's definition of "party" to include "one 'whose substantial interests will be affected by proposed agency action.'"

[15] See Rule 67-48.023(2) and (3), Fla. Admin. Code.
[16] The *Novoa* decision is now final; motions for rehearing and rehearing en banc were denied without comment.Jurisdictional briefs filed with the Florida Supreme Court are pending as of the date of this article. Also, the *Regency Gardens* final order was not appealed.
[17] *State ex rel. Department of General Service v. Willis*, 344 So.2d 580, 590 (Fla. 1st DCA 1977).

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Florida Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach 747 So. 2d 374 (Fla. 1999)

by Karen Putnal

For the time being, regulated parties in Florida remain entitled to petition an administrative agency for a declaratory statement, and to receive in response an official written statement of the agency's opinion of the application of existing statutory or administrative law to the particular facts and circumstances presented by the petitioner.[1] The recent ascendancy of an administrative appeal to the Florida Supreme Court presented the Court with an opportunity to affirm the traditional function of administrative declaratory statements as vehicles for the expression of administrative policy, and to appraise the state of administrative law in Florida.

The appeal, styled *Florida Dept. of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So.2d 374 (Fla. Nov. 4, 1999), arose from a dispute among a small group of Florida pari-mutuel facilities as to the proper distribution among themselves of uncashed tickets and breaks[2] generated from wagering on out-of-state thoroughbred races. The facilities petitioned the State Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, for a declaratory statement, anticipating that the Division would allocate the funds to one or more of the petitioners. Instead, the Division ruled that the funds at issue escheat to the State.[3] The Division noted in its declaratory statement that "[t]he Division is cognizant that a similar fact pattern may exist between other tracks in Florida and that the same dispute may reoccur between one of these Petitioners and a non-Petitioner. Therefore, the Division will initiate rulemaking to establish an agency statement of general applicability."

The petitioners appealed, seeking to vacate the declaratory statement both on its merits and also on procedural grounds. The petitioners argued that the Division's declaratory statement was procedurally invalid because, by the Division's own admission, the declaratory statement amounted to a rule of general applicability pursuant to section 120.52(8) of the APA, and thus could only properly be issued via the rulemaking procedures set forth in section 120.54. In a split decision, a panel of three judges of the Third District Court of Appeal agreed with the petitioners and set aside the Division's declaratory statement on procedural grounds without reaching the merits, holding that "once the Division reached the conclusion that the questions asked of it in the petitions had general applicability to the pari-mutuel industry, thus requiring rulemaking, the Division overstepped administrative bounds when it issued the declaratory statement."[4] *Investment Corp. of Palm Beach v. Division of Pari-Mutuel Wagering, Dept. of Business and Professional Regulation*, 714 So.2d 589, 590-591 (Fla. 3rd DCA 1998).

Judge Cope, the dissenting member of the Third District panel, wrote a lengthy opinion analyzing the history and function of the declaratory statement statute, as well as recent case law from the First District Court of Appeal construing the declaratory statement statute.[5] Judge Cope concluded as an initial matter that the procedural issue raised by petitioners was not "preserved" for appellate review,[6] and should not have been addressed by the majority. Judge Cope further reasoned that with respect to the majority's conclusion on the procedural matter, the majority erred in concluding that administrative agencies categorically lack authority to issue declaratory statements when the statement sets forth what may amount to a rule of general applicability as defined by section 120.52(15) of the APA. The Florida Supreme Court accepted jurisdiction to review *Investment Corp.* based on express and direct conflict with the First District decision in *Chiles v. Dept. of State, Division of Elections*, 711 So.2d 151 (Fla. 1st DCA 1998).[7]

In *Chiles*, the First District reviewed a declaratory statement issued by the Division of Elections on behalf of the Department of State. The petition for declaratory statement was filed by Commissioner of

Education Frank T. Brogan, who sought to determine whether public campaign financing remains available to candidates for public office following the termination of the Election Campaign Financing Trust Fund by a 1996 amendment to the Florida Constitution. Governor Chiles and the State Comptroller intervened, arguing on procedural grounds that the question presented by Commissioner Brogan's petition was not susceptible to resolution by means of an administrative declaratory statement because the declaration could be applied to any candidate running for a statewide office and would thus constitute a rule of general applicability. Reviewing the history and purpose of the declaratory statement statute, and the Legislature's 1996 amendment of the statute, the First District Court of Appeal rejected the Governor's argument and held that an agency may issue a declaratory statement addressing the particular facts and circumstances of a petitioner, even if the statement has the effect of stating a rule of general applicability.[8]

In a unanimous decision among all seven Justices, the Florida Supreme Court agreed with the analysis and conclusion of the First District in *Chiles* and with Judge Cope in *Investment Corp.* that administrative agencies are statutorily authorized to issue declaratory statements, even when a ruling expressed in such a statement constitutes a statement of general applicability, *as long as* the agency also complies with the mandatory rulemaking provisions of section 120.54 of the APA for purposes of enforcing the rule. *Florida Dept. of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374 (Fla. 1999). In reaching its conclusion, the Court observed that "modern society requires that administrative agencies receive some flexibility in how they may use their authority."

The *Investment Corp.* decision represents a valiant judicial attempt to identify the high-water mark of agency authority in the turbulent wake of the 1996 revisions to the APA. The Court grounded its analysis of the issues presented in *Investment Corp.* on an assessment of the function of declaratory statements within the broader context of administrative law and the power of administrative agencies to exercise discretion following the 1996 APA amendments. The Court incorporated into its analysis lengthy excerpts from Judge Cope's dissent and excerpts from another recent and highly visible interpretation of the APA by the First District styled *St. Johns River Water Management District v. Consolidated-Tomoka Land Co.*, 717 So.2d 72 (Fla. 1st DCA 1998).

In *Consolidated-Tomoka*, the First District undertook the task of articulating a rational interpretation of the Legislature's 1996 revision of section 120.52(8) of the APA, which defines the legislative authority granted to agencies to make rules. After quoting at length from *Consolidated-Tomoka* with approval, the Supreme Court held that the "lesson drawn from [the First District's] interpretation of the various statutes of the revised APA in *Tomoka Land* and *Chiles*, is that the Legislature will not micro-manage Florida's administrative agencies and that the public's interest is served in encouraging agency responsiveness in the performance of their functions." *Investment Corp.*, 747 So. 2d at 384.

Apparently unbeknownst to the Court, the Legislature had already taken steps to abrogate the holding of *Consolidated-Tomoka*, even as the oral argument in *Investment Corp.* was taking place. In June 1999, the Governor signed into law additional revisions to section 120.52(8) of the APA, for the express purpose of eliminating the statutory language construed in *Consolidated-Tomoka* to authorize agencies to promulgate rules "within the class of powers and duties" conferred by the Legislature. The 1999 revisions made clear that the interpretation of the revised APA set forth in *Consolidated-Tomoka* and embraced as sound analysis by the Florida Supreme Court was unacceptable to the Legislature. Unfortunately, the 1999 amendments did not illuminate a coherent, alternative interpretation of the APA that would be acceptable to the Legislature. Thus, the high-water mark identifying the degree of discretion afforded agencies in developing and promulgating rules to implement and interpret statutory law has slipped back into obscurity.

Accordingly, all those who gave a sigh of relief when *Consolidated-Tomoka* issued can draw in their breath again. It appears that notwithstanding common sense and abundant scholarly advice to the contrary, the Legislature may in fact intend to "micro-manage" Florida's administrative agencies, at least in contrast to the historic and traditional notions of administrative law set forth in *Consolidated-Tomoka* and cited with approval in *Investment Corp.*

This most recent burst of legislative activity relating to the APA raises numerous questions. What is the Legislature's intent with respect to agency discretion? And how is such intent to be reconciled with the various mechanisms for agency action set forth in the APA, each of which have historically been interpreted to require the exercise of a measure of administrative discretion? Does the Legislature's abrogation of *Consolidated-Tomoka* affect the validity of the Supreme Court's analysis of the proper purpose and role of administrative agencies as set forth in *Invest-*

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This newsletter is prepared and published by the Administrative Law Section of The Florida Bar.

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INVESTMENT CORPORATION
from page 7

ment Corp.? Are the 1999 amendments to the APA the final nails in the coffin of incipient policy[10]? Definitive answers to these and related questions will evolve, as they must, through judicial interpretation of the newly-clarified APA followed, perhaps, by further legislative adjustment of the Act.

[1] Administrative declaratory statements are authorized by section 120.565 of the Florida Administrative Procedure Act, Fla. Stat. (1999).

[2] "Breaks" are statutorily defined as "the portion of a pari-mutuel pool which is computed by rounding down to the nearest multiple of ten cents and is not distributed to the contributors or withheld by the permitholder prior to the distribution of the pool." § 550.002(34), Fla. Stat. (1999).

[3] Section 550.1645, Fla. Stat. (1997) provides that all interests in or contributions to any pari-mutuel ticket that is unclaimed and abandoned for a period of 1 year after the date of issuance of the ticket escheats to the state.

[4] The Third District majority relied in large part on the First District Court of Appeal's opinions in *Regal Kitchens Inc. v. Florida Dep't of Revenue, 641 So. 2d 158 (Fla. 1st DCA 1994); Tampa Elec. Co. v. Florida Dep't. of Community Affairs*, 654 So.2d 998 (Fla. 1st DCA 1994). In *Regal Kitchens*, the court invalidated a declaratory statement issued by the Department of Revenue, on grounds that the statement was impermissibly broad and not limited "to an expression of the agency's position on an issue raised by an individual petitioner in a particular set of facts." *Regal Kitchens*, 641 So.2d at 162-163. The *Regal Kitchens* opinion states unequivocally that "an administrative agency may not use a declaratory statement as a vehicle for the adoption of a broad agency policy or to provide statutory or rule interpretations that apply to an entire class of persons." *Regal Kitchens*, 641 So.2d at 162. The *Tampa Elec. Co.* opinion invalidated a declaratory statement issued by the Department of Community Affairs on the same grounds. *Tampa Elec.*, 654 So.2d at 999. In both cases, however, the court stated that the declaratory statements at issue were broader than necessary and went well beyond the issue presented by the petitioners. *Regal Kitchens*, 641 So.2d at 162: *Tampa Elec. Co.*, 654 So.2d at 999.

As noted by Judge Cope in his dissent in *Investment Corp.*, both *Regal Kitchens* and *Tampa Elec.* were issued prior to the Legislature's 1996 revision of the declaratory statement statute to eliminate the word "only" from the pre-1996 version of the statute: "[a] declaratory statement shall set out the agency's opinion as to the applicability of a specified statutory provision or of any rule or order of the agency as it applies to the petitioner in his particular set of circumstances *only*." Section 120.565, Fla. Stat. (1995) (emphasis added). Judge Cope maintained that the word "only" should never have been interpreted to mean that an agency cannot issue a declaratory statement unless the statement uniquely affects only the petitioner. *Investment Corp.*, 714 So.2d at 594, n. 7. The First DCA appears to have viewed the 1996 amendment as liberating it from its prior, more restrictive interpretations of section 120.565. *See Chiles v. Dep't. of State, Division of Elections*, 711 So.2d 151, 154 (Fla. 1st DCA 1998).

[5] *Chiles v. Dep't. of State, Division of Elections*, 711 So.2d 151, 154 (Fla. 1st DCA 1998).

[6] Judge Cope observed that a party cannot appeal an "error" invited by or caused by the party itself. As Judge Cope stated in his dissent, "The racetracks asked for a declaratory statement. The racetracks got a declaratory statement." *Investment Corp. of Palm Beach v. Fla. Dept. of Business and Prof. Reg.*, 714 So.2d at 592.

This point was not lost on the Florida Supreme Court, which agreed that because the petitioners would likely not have raised the procedural issue had the Division issued a ruling to the petitioners' liking, and because the petitioners knew or should have known that the declaratory statement they sought would likely have general applicability to the pari-mutuel industry, or a substantial subset of such industry, the petitioners had essentially estopped themselves from preserving for appellate review the issue of whether the Division had authority to issue such a statement. *Fla. Dep't. of Business and Prof. Reg. v. Investment Corp., 747 So. 2d at 385.*

[7] *Florida Department of Business and Professional Reg., Div. of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 727 So.2d 904 (Fla. 1998).

[8] The First District went on to reverse the Division of Elections declaratory statement on its merits. *Chiles*, 711 So.2d at 154-55.

[9] Amended House Bill 107 was signed into law by Governor Bush on June 18, 1999, as Laws of Florida, Chapter 99-379.

[10] Incipient policy traditionally refers to a process of agency policy development that begins with case-by-case adjudication by agencies and proceeds along a continuum of policy development to eventual rulemaking. This process may be distinguished from ad-hoc adjudication, which may be described as case-by-case agency adjudications that are not linked to a *process* of policy development, i.e., the administrative adjudication of cases that are not addressed by an existing rule or statute and that are unique or nearly unique in their facts and circumstances. Because ad hoc adjudications address unique or nearly unique circumstances, as opposed to generally occurring, circumstances, ad hoc adjudications do not proceed along the policy development continuum to rulemaking.

Karen Putnal *is an associate in the Tallahassee office of Parker, Hudson, Rainer & Dobb, LLP, where she practices administrative and appellate law with an emphasis on health care matters.*

APPELLATE CASE NOTES

by Mary F. Smallwood

DECLARATORY STATEMENTS
Department of Business and Professional Regulation v. Investment Corp. of Palm Beach, 24 Fla. L. Weekly 520 (Fla. 1999). See feature article.

Budin v. Department of Business and Professional Regulation, 24 Fla. L. Weekly 2710 (Fla. 3d DCA 1999)

Budin, who had pled guilty to a federal crime of conspiracy, requested a declaratory statement from the Department regarding the applicability of Section 550.3615(3), Fla. Stat., to him. That provision prohibits anyone convicted of bookmaking from attending a race track in Florida. The Department dismissed the request on the grounds that it did not have the authority to construe a federal statute. The court reversed. While it recognized that the agency had no jurisdiction to interpret a federal statute, it does have authority to determine whether Budin may attend a race track under the Florida statute.

LICENSING PROCEDINGS
Sanfiel v. Department of Health, 24 Fla. L. Weekly 2831 (Fla. 5th DCA 1999)

In *Sanfiel*, a licensed psychiatric nurse was disciplined for disclosure of confidential patient information. Sanfiel obtained data on former psychiatric patients when he purchased a used computer that had been owned by a psychiatric hospital. The

data had not been removed from the hard drive of the computer. Sanfiel disclosed the information to the press, apparently believing that the hospital had been involved in criminal activity that should be investigated. Sanfiel's license was suspended for the action. On appeal, Sanfiel argued that the Board of Nursing had no jurisdiction to discipline his license because he had not been acting as a nurse in the matter and none of the individuals involved were his patients. The Board had determined that Sanfiel violated Rule 59S-8.005 by "violating the confidentiality of information or knowledge concerning a patient." The appellate court noted that deference must be given to the agency's interpretation of its regulations and held that the agency's construction of the rule in this case was reasonable.

ADMINISTRATIVE PROCEEDINGS

Noone v. Department of Corrections, 24 Fla. L. Weekly 2619 (Fla. 1st DCA 1999)

The Public Employees Relations Commission dismissed an appeal by Noone from his termination by the Department of Corrections when he failed to appear at a noticed hearing. Notice of the hearing was provided to Noone's counsel who did appear. Counsel stated that she had mailed a copy of the notice to Noone. However, when her client failed to appear, she declined to proceed with the evidentiary hearing because Noone was to be the only witness. Noone filed an exception to the dismissal requesting rescheduling of the final hearing and stating that he did not receive a copy of the notice of hearing. PERC determined that, in accordance with its policy, a petitioner has a duty to stay in contact with his counsel. The court, however, reversed PERC and remanded for an evidentiary hearing as to the reason for Noone's failure to appear. It noted that there was insufficient information in the exception to determine the basis for that failure. The decision is consistent with similar decisions where a party fails to file a timely petition or respond within required time frames. Almost uniformly, the courts have held that the agency or DOAH must allow the party an opportunity to present evidence on the reasons for such failure.

Public Health Trust of Miami-Dade County, Fl v. Agency for Health Care Administration, 25 Fla. L. Weekly 94 (Fla. 3d DCA 2000)

The standing of a competing health care provider was addressed in *Public Health Trust of Miami-Dade County, Fl*. Public Health challenged the issuance of a certificate of need to Cleveland Clinic for a kidney transplant center. Both hospitals provided those services. Section 408.039(5), F.S., provides that facilities within the same "district" may challenge or intervene in a proceeding for a certificate of need. Although the two facilities were not in the same AHCA district, Public Health argued that it had standing because it was in the same "transplant region." The ALJ found, and AHCA agreed, that the meaning of the statute was clear and unambiguous. AHCA declined to construe the language of the statute to mean region when it said district. The court agreed. It held that a court may not add words to a statute not provided by the Legislature. In this case, the statute specifically defined the term "district" by identifying the county or counties within each district.

AGENCY ACTION ON RECOMMENDED ORDERS

L.B. Bryan and Company v. School Board of Broward County, Florida, 24 Fla. L. Weekly 2805 (Fla. 1st DCA 1999)

There have been numerous cases under Chapter 120 addressing the authority of an agency to modify or reject an administrative law judge's findings of fact in a recommended order. A newer issue is when an agency may reject or modify conclusions of law. Section 120.57(1)(l), Fla. Stat. (1996), provided that an agency may reject or modify "conclusions of law and interpretation of administrative rules over which it has substantive jurisdiction." The issue of when an agency has substantive jurisdiction arose in a bid protest proceeding involving the Broward County School Board. L.B. Bryan submitted a request for proposal (RFP) to provide insurance coverage to the school board. Since Bryan did not include coverage of athletic events in its response to the RFP, the school board proposed to award the contract to a competitor. The unsuccessful bidder challenged the award. The recommended order concluded that the successful bidder had been in violation of certain provisions of the Florida Insurance Code and, thus, should not have been awarded the contract. The school board rejected the conclusions of law governing the interpretation of the Insurance Code and awarded the contract to the company it had originally found responsive. On appeal, Bryan argued that the school board had no authority to modify those particular conclusions of law since they involved statutory provisions not within the board's substantive jurisdiction. The court disagreed and affirmed. While the court noted that the controlling provisions of Chapter 120 had been modified in 1999 to clarify that both conclusions of law and interpretations of administrative rules must be within the agency's substantive jurisdiction, it held that case law prior to the modification of the statute had not required that conclusions of law be within the agency's substantive jurisdiction.

RULEMAKING

Anderson Columbia Company, Inc. v. Board of Trustees of the Internal Improvement Trust Fund, 25 Fla. L. Weekly 37 (Fla. 1st DCA 1999)

The Department of Environmental Protection proposed to adopt a regulation that would have created a "reversionary interest" in the state in certain lands that had previously been conveyed into private ownership under the 1856 Riparian Act or the 1921 Butler Act (which replaced the Riparian Act). Those acts encouraged upland riparian owners to improve sovereign submerged lands by bulkheading, filling, or construction of permanent structures. In 1957, the Butler Act was repealed by the Bulkhead Act. That act provided that the title to any lands previously conveyed by the state was "confirmed in the upland owners and the trustees shall on request issue a disclaimer to each such owner." Over the years, the Department had declined to issue unconditional disclaimers to owners who had not filled the submerged

APPELLATE CASE NOTES

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lands. In a number of those cases, the Department was required to issue the disclaimer after an administrative proceeding. The proposed rule attempted to give the Department the right to reclaim title to any lands that were no longer bulkheaded or filled, citing the Public Trust Doctrine. In proposing the rule, the Department relied on language in the Butler Act indicating that such conveyances were subject to the "inalienable trust" under which the state holds title to submerged lands.

In *Anderson Columbia*, several affected parties challenged the proposed rule. The Administrative Law Judge found the rule to be valid except for one provision. The First District disagreed and reversed. The court relied on a long line of cases under the Riparian and Butler Acts which defined the status of the title conveyed as equivalent to fee simple title. The court further noted that the Bulkhead Act contained no language authorizing the Trustees to qualify or deny a request for disclaimer if all requirements of the Acts had been met. While the decision notes that the case "necessarily involves the public trust doctrine," it does not discuss the effect of that doctrine in any detail.

Prieguez v. Florida Elections Commission, 24 Fla. L. Weekly 2642 (Fla. 3d DCA 1999)

The Florida Elections Commission found that Representative Prieguez had failed to file his campaign treasurer's report in a timely manner when it was received by the Commission on August 31, three days after it was due. The Representative argued that he had personally mailed it on the due date and submitted an affidavit to that effect. He further noted that the Commission had previously accepted reports mailed on the due date but not received until a later date. The Commission found the report to be late on the grounds that the postmark was unreadable and fined Prieguez. It relied in part on a regulation that had been adopted six months subsequent to the filing of the treasurer's report which provided that the filing date would be deemed to be the date of receipt where the postmark was illegible. The court rejected the Commission's reliance on the rule, noting that it was not even in effect when Prieguez filed his report. The fact that the Commission had been "discussing a possible change" was irrelevant.

Lanoue v. Department of Law Enforcement, 25 Fla. L. Weekly 76 (Fla. 1st DCA 1999)

The standing of a party to challenge a proposed rule of the Department of Law Enforcement was at issue in *Lanoue*. Lanoue had been stopped for driving under the influence, and the officer at the scene administered two breath-alcohol tests. Lanoue's recorded levels exceeded the legal limit, and his license was administratively suspended. He challenged several rules of the Department which addressed the calibration and testing of breath test instruments. In addition, he challenged certain unadopted policies of the Department controlling the criteria for analyzing the alcohol reference solution used to test the instruments. The administrative law judge concluded that Lanoue lacked standing to file the challenge because his breath-alcohol level exceeded the range of variation allowed for calibration under the rule. The court reversed, holding that Lanoue met the two pronged standing test of a real and immediate injury and an interest within the zone of interests to be protected. In his petition for hearing, Lanoue alleged that he had been arrested and charged with DUI, that the results of his breath test would be admissible at his upcoming trial, and that he would be subject to judicially imposed penalties, including a fine and imprisonment. The court concluded that these allegations were sufficient to establish a real and immediate injury. The court also concluded that Lanoue had an interest within the zone of interest of the "implied consent" law. Since the statutory scheme requires that a licensed driver must submit to "an approved chemical test or physical test," the court held that Lanoue's personal test results were irrelevant to the standing test. However, the court agreed with the administrative law judge that the effect of the unadopted policies on Lanoue was simply too remote to provide standing.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Florida Public Employees Council 79, AFSCME v. Department of Children and Families, 24 Fla. L. Weekly 2621 (Fla. 1st DCA 1999)

Certain members of Florida Public Employees Council 79, AFSCME were dismissed from employment by the Department of Children and Families when it was determined that they failed to pass a screening test established in Chapter 435, Fla. Stat., with respect to prior criminal proceedings. That statute was enacted in 1995, while each of the employees had been employed by the Department since at least 1990. The former employees sought declaratory and injunctive relief on a number of grounds, alleging, *inter alia*, that they had been denied due process of law because the statute created a presumption that persons who had entered a no contest or guilty plea to certain criminal offenses were unfit to be employed as caretakers to juveniles. The parties had previously filed a challenge to the rule implementing these statutory provisions which was decided in favor of the Department. An appeal was filed in that matter but voluntarily dismissed before the appellate court issued a decision. The Department argued that the petitioners had failed to exhaust administrative remedies, relying on *Key Haven Associated Enterprises, Inc. v. Board of Trustees of the Internal Improvement Trust Fund*, 427 So. 2d 153 (Fla. 1982), and *Gulf Pines Memorial Park, Inc. v. Oakland Memorial Park, Inc.*, 361 So. 2d 695 (Fla. 1978). The circuit court dismissed the complaint on the basis of this precedent.

In the decision on appeal, the First District disagreed with the trial court as to count II of the complaint which alleged a denial of due process. The court found that that count alleged the facial unconstitutionality of the statute, which *Key Haven* recognizes as an exception to the requirement that administrative remedies be ex-

hausted. The court noted that both *Key Haven* and *Gulf Pines* could be read to require the exhaustion of administrative remedies where a petitioner has elected to start the administrative process. However, the court concluded that the better construction of those cases was to allow the petitioners to pursue their remedies in circuit court as to the facial constitutionality of the statute rather than requiring that each petitioner challenge his or her termination through the administrative process.

PUBLIC RECORDS ACT

Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 25 Fla. L. Weekly 133 (Fla. 5th DCA 2000)

Again the issue of whether a private institution is subject to the Public Records Act was addressed in *Memorial Hospital-West Volusia*. In this case, however, the retroactivity of Section 395.3036, Fla.Stat. (1998), was at issue. The District Court certified the following question to the Florida Supreme Court:

SHOULD SECTION 395.3036 BE APPLIED RETROACTIVELY?

Section 395.3036 provides that the records of a private hospital corporation that leases a public facility are confidential when the private lessee meets certain criteria with respect to the relationship between the public and private entities.

ATTORNEY'S FEES

Mounir v. Department of Health, 25 Fla. L. Weekly 63 (Fla. 4th DCA 1999)

Mounir, a licensed dentist, was the subject of a disciplinary proceeding involving a dispute over the provision of dental records to a patient. The case was dismissed, and Mounir sought attorney's fees from the Department of Health pursuant to Section 57.111, Fla. Stat., as a prevailing small business party. That provision requires that attorney's fees be awarded to "a sole proprietor of an unincorporated business, including a professional practice" or a "partnership or corporation, including a professional practice." The Department objected on the grounds that, while Mounir practiced through a professional service corporation, the license which was the subject of the disciplinary action was issued to him personally. In *Mounir*, the court recognized that the Department's position created a "Catch 22" for licensed professionals who choose to form a professional service corporation. While agreeing that a literal interpretation of the statute would support the Department's position, the court concluded that result could not have been intended by the Legislature. The Department's reliance on *Department of Professional Regulation v. Toledo*, 549 So. 2d 715 (Fla. 1st DCA 1989), was rejected. That case involved a request for attorney's fees by an employee of a small business party as opposed to the principal of the business.

Mary F. Smallwood *is a partner with the firm of Ruden, McClosky, Smith, Schuster & Russell, P.A. in its Tallahassee office. She is Chair-elect of the Administrative Law Section of The Florida Bar and a Past Chair of the Environmental and Land Use Law Section. She practices in the areas of environmental, land use, and administrative law. Comments and questions may be submitted to MFS@Ruden.com.*

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FROM THE CHAIR
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On the Move

Dan R. Stengle, who served as General Counsel to the late Governor Lawton Chiles, entered private law practice in Tallahassee by joining the Tallahassee law firm of Hopping Green Sams & Smith, P.A., as a shareholder in the firm.

Mr. Stengle, the Chair-elect of the Administrative Law Section of The Florida Bar, will represent clients on matters relating to land use, facility siting, general administrative law and legislative representation.

He has an extensive background in the Executive and Legislative branches of state government on various issues associated with land use regulation, natural resource regulation and wildlife protection.

Mr. Stengle received his law degree from the Florida State University College of Law in 1982 and his bachelor's degree from the University of South Dakota in 1978.

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Wm. Williams

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FROM THE CHAIR
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Stephen T. Maher is a Miami lawyer and legal educator who has practiced and taught law for the past twenty-three years. He now practices with Stephen T. Maher, P.A. and serves as Director of Attorney Training at Shutts & Bowen, the oldest law firm in Miami. He has written numerous articles on legal education, on technology and the law, and on administrative law. He has also been active in the organized bar. He is a past chair of the Administrative Law Section and past chair of the Council of Sections of The Florida Bar. He also trains lawyers throughout the United States through his consulting company, The Practical Professor Incorporated, pracprof@usual.com <http://www.usual.com>

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