



Administrative Law Section Newsletter

Vol. XXVII, No. 1

Elizabeth W. McArthur, Editor

September 2005

From the Chair An Introduction and the Year Ahead

by Deborah K. Kearney

One of the best rewards for participating in our Section's Executive Council for the past 10 years is the opportunity to know and work with so many gifted, giving, and entertaining attorneys who are involved in every aspect of administrative practice. The Administrative Law Section has been fortunate to enjoy the support of not only private practitioners and agency lawyers but administrative law judges, legislative lawyers, legal educators, and others involved in the policy side of the practice. Throughout my career in government, the Section has come to my aid whenever I requested it — which in my career was many times. I take the reins as Chair with a great sense of gratitude and personal obligation to pay back the many courtesies extended to me from all the hard work that volunteers have provided.

My introduction to administrative law was by fire, or perhaps more accurately, by conflagration, and I survived due to the contributions of the Executive Council of this Section.

In the 1991 legislative session, a session which began on the heels of Lawton Chiles' initial inauguration as Governor (and fairly shortly into my tenure as a lawyer in the Governor's legal office), a comprehensive APA bill passed and was presented to Governor Chiles for action. This was a bill passed by an angry

Legislature that, by and large, viewed executive agencies as operating out of control and the courts as allowing them to do so. The Legislature took particular exception to the development of policy by incipient rulemaking or by agency order and, among other provisions, the bill declared that "rulemaking is not a matter of agency discretion." The bill required that any statement defined as a rule must be adopted through the chapter 120 process as soon as reasonable and practicable and added teeth to the requirements through attorneys' fees provisions against agencies that failed to buck up.

Needless to say, the agencies were stunned and wondered how they could possibly survive under such an oppressive law. Without revealing my advice to the Governor, let us just say that there were many surprised folks when the bill was allowed to become law. The Legislature was to come back the next year and balance out the changes with some measures that would allow for greater agency efficiency and flexibility. That was a learning year for everyone!

In 1992, the APA was amended to *add* layers to the rulemaking process through the instigation of the notice of rule development and the requirement for economic impact statements for certain rules. We missed the efficiency and flexibility measures as

well in 1993, 1994, and 1995. What I did find in the intervening years was the Administrative Law Section and its incredibly helpful Executive Council. I was provided all of the expert advice that I could take in, and it was always provided in a neutral way or presented by all of the sides that had differing viewpoints.

In 1995, in his second inaugural address, Governor Chiles shocked many, including me, by declaring that he wanted to reduce the number of agency rules by half. That year, the Governor also established the Administrative Procedure Act Review Commission, which was charged with proposing a simplified version of the APA, with increasing flexibility in the application of administrative rules and procedures, and, finally, with increasing agency accountability to the Legislature and to the public. The Commission proposed a number of changes, some an attempt to give

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FROM THE CHAIR

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agencies some flexibility from rigid adherence to rules. The Commission also recommended that there be a top to bottom rewrite of Chapter 120. With amendments adopted every year since its 1974 inception, the APA had become quite difficult to maneuver. Only with the incredibly generous assistance of members of the Executive Council were we able to undertake that big job.

Another significant project the Executive Council assisted with was to work with the Governor's Office in drafting the first set of the uniform rules of procedure in 1997. A number

of Executive Council members served on the Governor's Task Force to develop the rules. The group did not stop with simply drafting the rules, but were by our side in negotiations with the Joint Administrative Procedures Committee and handled the staff work before the Administration Commission (Governor and Cabinet), who adopted the uniform rules.

Along the way I joined the Executive Council and have had the remarkable opportunity to learn from all of the other members. I would be remiss if I did not begin my year as Chair of the Section by thanking all of those members of the Council who have volunteered incredible amounts of time for the good of administrative

law, of the government, and of the public, and who have so generously assisted me personally. Thank you all.

My overall goal for the Section in the coming year is to spark more energy in the Section—the kind of energy that existed when I joined the Section a decade ago. While the legislative arena has quieted substantially in recent years, there is always some amount of legislative activity. Where we particularly need assistance, however, is with our publications. We need writers to submit articles for the *Bar Journal* and for our very excellent newsletter. We need volunteers to assist in producing CLE's. I look forward to your increased participation in Administrative Law Section activities.

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THE FLORIDA BAR

APPELLATE CASE NOTES

by Mary F. Smallwood

Adjudicatory Proceedings

Brown v. Department of Financial Services, 30 Fla. L. Weekly 1017 (Fla. 4th DCA 2005) (Opinion filed April 20, 2005)

The Department of Financial Services ("DFS") entered a default order revoking Brown's insurance license when he failed to file a petition for hearing within 21 days of receipt of the administrative complaint. He moved to set aside the default, alleging that he had filed a letter with DFS requesting additional information regarding the contents of the complaint and never received a response. Brown alleged that he was unable to respond to the complaint because it contained only the initials of the customers and not their full names. He assumed that he did not need to file a petition while he was awaiting a response. DFS denied the motion, noting that it had sent Brown a letter in response to his inquiry.

On appeal, the court reversed. It concluded that Brown had made allegations that might sustain an argument of equitable tolling if proven true. The court cited *Machules v. Department of Administration*, 523 So. 2d 1132 (Fla. 1988), in noting that the doctrine focuses on respondent's excusable ignorance of the limitations period and lack of prejudice to the agency.

Riopelle v. Department of Financial Services, 30 Fla. L. Weekly 1601 (Fla. 1st DCA 2005) (Opinion filed June 28, 2005)

Riopelle, owner of a construction company, appealed an order assessing fines for her failure to provide workers' compensation coverage to certain employees. The Department had entered a stop work order and assessed \$22,200 in penalties. The administrative law judges in separate cases had determined that she had failed to demonstrate that the individuals were independent contractors.

On appeal, Riopelle challenged the constitutionality of the penalty as

being excessive under Art. I, § 17 of the Florida Constitution and challenged the provisions of Section 440.107, Fla. Stat., as a deprivation of due process.

The court affirmed. It held that the statute did not deprive Riopelle of due process as it provided for an expedited hearing upon issuance of the stop work order. Riopelle had been informed of her right to an expedited hearing but had chosen to challenge the order under Section 120.57(1). Accordingly, the court held she could not complain about the lack of an expedited hearing on appeal.

With respect to the fines, the court held that the fine must be grossly disproportionate to the gravity of the offense to violate the constitutional provision, and the court found that was not the case there. Moreover, the court held that it must grant great deference to the legislature's determination of what is an appropriate fine.

Attorney's Fees

Steadman v. Department of Management Services, 30 Fla. L. Weekly 1043 (Fla. 5th DCA 2005) (Opinion filed April 22, 2005)

Lavondra Steadman applied to the Division of Retirement for the payment of survivor's benefits to her ward (and biological son) John following the death of her mother Thelma. John had been adopted by Thelma and was now Lavondra's ward. The Division informed Lavondra that it needed an order determining "heirs" and guardianship papers to pay benefits. She provided a court order stating that Thelma's beneficiaries were her three adult children and John, that each was entitled to a 25% share of her estate, and that Lavondra was now John's legal guardian. The Division concluded that the court order was not responsive to its request. An administrative hearing was held, and the administrative law judge concluded that the order was insufficient. He recommended that the Division enter an order rejecting the

request for benefits if Lavondra did not provide adequate documentation within 45 days.

On appeal, the court reversed. It noted that the probate rules had been amended to provide that the probate court was required to enter an order determining "beneficiaries" instead of "heirs." On appeal, the Division did not address the sufficiency of the order but argued that it was not timely filed. However, the court noted that the Division received a copy of the order before the recommended order was received from the administrative law judge recommending that Lavondra be given 45 days to comply. Finally, the court assessed attorney's fees against the Division because "Lavondra should never have been required to file this appeal." Judge Griffin concurred in the result but dissented with respect to the award of attorney's fees. He noted that there had been significant procedural confusion on the part of both Steadman and the agency. Accordingly, he would not have found that the agency action was a gross abuse of discretion.

Appeals

Department of Transportation v. Rosiek Construction Co., Inc., 30 Fla. L. Weekly 984 (Fla. 1st DCA 2005) (Opinion filed April 15, 2005)

The Department of Transportation ("DOT") filed a petition for review of a non-final order challenging a discovery order of the administrative law judge in a bid protest proceeding. The challenger sought to obtain DOT files pertaining to the cost estimate or budget for the project. Pursuant to Section 337.168(1), Fla. Stat., such documents are confidential and exempt from disclosure under the Public Records Act until the contract is executed or the project is no longer under active consideration.

Rosiek Construction sought the records in discovery, alleging that they were material and necessary to its case. The administrative law judge ordered the records to be pro-

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CASE NOTES

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vided to counsel for Rosiek with certain conditions, including that the parties enter into a confidentiality agreement approved by the judge and limit the individuals who had access to the documents. Alternatively, the judge ordered that DOT would not be able to rely on the documents at hearing if it decided not to disclose them.

The court dismissed the petition for review. It noted that petitions to review non-final orders are rarely granted. In this case, it found that the order of the administrative law judge was adequate to protect the confidentiality of the documents. Accordingly, the court concluded that DOT had not met its burden of proof that the harm could not be remedied by an appeal of the final order.

Hearing Officers

Department of Highway Safety and Motor Vehicles v. Griffin, 30 Fla. L. Weekly 1496 (Fla. 4th DCA 2005) (Opinion filed June 15, 2005)

In four consolidated petitions for writ of certiorari, the court held that there is no constitutional impediment to the Department of Highway Safety and Motor Vehicles use of non-lawyer hearing officers, noting by analogy that the Florida Constitution allows non-lawyers to sit on the county court bench. However, in the case of Mr. Griffin, the court agreed with the circuit court that the hear-

ing officer improperly acted as an advocate for the Department. The hearing officer had interrupted the hearing to personally locate a document that a Department witness had testified should be in the case file and returned to enter it into the record. The court noted that a non-lawyer hearing officer was under the same obligation as a judge to appear impartial and neutral in a proceeding.

Standard of Review by Appellate Court

Big Bend Hospice, Inc. v. Agency for Health Care Administration, 30 Fla. L. Weekly 1543 (Fla. 1st DCA 2005) (Opinion filed June 20, 2005)

Big Bend Hospice appealed orders of the Agency for Health Care Administration (“AHCA”) adopting two recommended orders that fixed a hospice need pool for a service area and granted a certificate of need to a competitor of Big Bend Hospice. AHCA took the position that the standard of review on appeal in a certificate of need case was governed solely by Section 408.039(6)(b), Fla. Stat., which provides that the reviewing court must affirm the final order unless it is “arbitrary, capricious, or not in compliance with ss. 408.031-408.045.” Under that section, AHCA argued that it was due a greater degree of deference than normally provided an agency in entering a final order.

The court rejected that position. It held that the review standard in Section 408.039(6)(b) was simply a restatement of the standard in Section 120.68, Fla. Stat., and that the degree

of deference due the agency was no different than that in other administrative appeals.

Venue

Worldwide Appraisal Services, Inc. v. Department of Business and Professional Regulation, 30 Fla. L. Weekly 1593 (Fla. 5th DCA 2005) (Opinion filed June 24, 2005)

Worldwide Appraisal Services filed suit in circuit court in Volusia County seeking temporary and permanent injunctive relief to prevent the Department of Business and Professional Regulation from enforcing Rules 61J1-4.010 and 61J1-4.090, Fla. Admin. Code, and seeking damages for purported loss of business as a result of adoption of the rules. The rules required registered trainee appraisers to be supervised by a registered appraiser and required that the supervisor and trainee must be located in offices of the company in the same county or a contiguous county. In this case, the supervising appraiser was located in Duval County and the trainee was located in Volusia County.

The Department moved to dismiss the complaint on several grounds, including improper venue. The circuit court held that the plaintiffs had failed to establish that they would suffer irreparable harm or that they had no adequate remedy at law. It further held that venue was proper in Orange County, the location of the agency’s headquarters.

The court affirmed. With respect to venue, the court held that the sword-wielder doctrine did not apply to allow the plaintiffs to bring suit in their home county since the rule being challenged applied state-wide and did not involve an invasion of the personal rights of the plaintiffs.

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

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

- Deborah K. Kearney, Tallahassee** (debby.kearney@myfloridahouse.gov) **Chair**
- Patrick L. (Booter) Imhof** (imhof.booter@flsenate.gov) **Chair-elect**
- J. Andrew Bertron, Jr.** (andy@hueylaw.com) **Secretary**
- Christiana T. Moore** (cmoore@psc.state.fl.us) **Treasurer**
- Elizabeth W. McArthur, Tallahassee** (emcarthur@radeylaw.com) **Editor**
- Jackie Werndli, Tallahassee** (jwerndli@flabar.org) **Program Administrator**
- Colleen P. Bellia, Tallahassee** (cbellia@flabar.org) **Layout**

Statements or expressions of opinion or comments appearing herein are those of the contributors and not of The Florida Bar or the Section.

Agency Snapshots

Division of Administrative Hearings

In October 2001 the last vestige of the now-abolished Department of Labor, the Division of Workers' Compensation, was divided among several agencies, with the Office of Judges of Compensation Claims moving to DOAH. Thereafter, DOAH has been responsible for two programs: the adjudication of administrative disputes and the adjudication of workers' compensation claims. This snapshot does not address the workers' compensation portion of DOAH's responsibilities.

Head of the Agency:

Robert S. Cohen, Director and
Chief Administrative Law Judge
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
SUNCOM 278-9675

Agency Clerk:

Ann Cole
The DeSoto Building
(850) 488-9675
SUNCOM 278-9675
Fax filing (850) 921-6847
Fax SUNCOM 291-6847

Hours of Operation:

8:00 a.m. to 5:00 p.m. Documents

filed after 5:00 p.m. are deemed received as of 8:00 a.m. the next regular day of business.

Number of Administrative Law Judges:

36, including Chief Judge Robert S. Cohen and Deputy Chief Judge Harry L. Hooper who also hear cases.

Caseload Distribution:

For efficiency and economy of travel the general jurisdiction judges are divided into geographic districts: southern, middle, and northern. Cases are also heard by video teleconferencing between Tallahassee and major cities in Florida and, occasionally, by telephone. Certain judges also specialize by subject matter.

Kinds of Cases:

In addition to licensing and disciplinary cases, bid protests, and rule challenges, DOAH ALJs also hear non-Chapter 120 cases arising under, for example, the Baker Act, exceptional student education, medical malpractice arbitration, Neurological Injury Compensation Act, adoptions, election law violations, teacher employment termination, employment and housing discrimination, State of

Florida retirement and insurance coverage, and the administrative establishment of paternity and child support obligations. By contract DOAH ALJs also hear cases involving water management districts and land use cases for local governments such as the Monroe County Planning Commission, the City of Clearwater, and the City of Tallahassee/Leon County.

Practice Tips:

Electronic filing is available for Florida attorneys on a case-by-case basis. DOAH's website *www.doah.state.fl.us* contains the Uniform Rules of Procedure, tips on representing yourself at DOAH, intercom phone numbers for the ALJs' secretaries, and instructions for registering for and utilizing electronic filing. The website allows access to dockets for both open and closed cases, and a click on the entry allows viewing of the document itself. The case search function on the website allows legal research by case number, name of party, statute number, rule number, date the recommended or final order was issued, referring agency, case suffix, attorney, ALJ, or full text search.

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation was created by the Legislature and is headed by the Secretary, a gubernatorial appointment subject to confirmation by the Senate.

Head of the Agency:

Simone Marstiller, Secretary
1940 North Monroe Street
Tallahassee, FL 32399-0750
(850) 413-0755

Agency Clerk:

Sarah Wachman
1940 North Monroe Street
Tallahassee, FL 32399-2202
(850) 921-0342

Hours of Operation:

8:00 am to 5:00 pm

General Counsel:

Leon M. Biegalski
1940 North Monroe Street
Tallahassee, FL 32399-2202
(850) 488-0063

Leon is a Florida native, raised in Pompano Beach, Florida. He completed his undergraduate degree, a Bachelor of Science with a double major in Political and Social Science with a Certificate in Urban Planning and a Minor in History, at Florida State University in 1990. In December, 1992, he earned his J.D. from Nova University. Leon began his legal career with DBPR in June, 1993, prosecuting for several professional licensure boards while working his way up in the agency, serving as Chief Attorney for the Division of Pari-Mutuel Wagering and Executive Director of several boards before being appointed General Counsel. Leon believes the best part of being General Counsel is the chance to work with great attorneys both inside and outside the agency. Further, the diversity of regulatory issues in which DBPR is involved constantly brings

interesting challenges and learning opportunities to his office.

Number of Lawyers on Staff: 34

Kinds of Cases:

Professional licensure, discipline, rule-making, and related appeals.

APA Interaction:

Substantial. The Department is also occasionally impacted by Chapter 120, F.S. as it relates to procurement and bid protests. Because of the regulatory nature of the department and professional boards, the agency is continually in the process of rule-making.

Tip:

Do not hesitate to contact an attorney with the Department if you have a question regarding the licensure or disciplinary process. Open communication and understanding of the issues can often lead to a smoother resolution.



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Minutes

Administrative Law Section Executive Council and Annual Meeting June 24, 2005 Annual Meeting of The Florida Bar Orlando, Florida

Draft - Not yet approved by Executive Council

I. CALL TO ORDER

Robert Downie, Chair, called the meeting to order at approximately 10:39 a.m. on June 24, 2005. The following members were in attendance: Charlie Stampelos, Linda Rigot, Andy Bertron, Cathy Lannon, Cathy Sellers, Booter Imhof, Chris Moore, Debby Kearney, Clark Jennings, and Mary Ellen Clark. Attending by telephone were: Seann Frazer, Donna Blanton, Li Nelson, Dave Watkins, and Rick Ellis. Jackie Werndli, Section Administrator, was also in attendance. Keith Rizzardi from the Government Lawyer Section, Bruce Lamb, Administrative Law Judge Errol Powell, and Bob Cohen, Chief Judge from DOAH, were also in attendance. The following members were absent: Natalie Smith, Allen Grossman, Elizabeth McArthur, and Bill Williams.

II. PRELIMINARY MATTERS

MINUTES: The minutes from the January 2005 Executive Council Meeting were approved as corrected upon motion by Charlie Stampelos, seconded by Linda Rigot.

TREASURER REPORT: Andy Bertron gave the Treasurer's Report that the section has money and that we are in good shape.

III. COMMITTEE REPORTS AND SECTION BUSINESS

CERTIFICATION: Keith Rizzardi reported to the council on the Board of Legal Specialization and Education and Government and Administrative Law certification. It has been approved by the board and will be

heard by The Florida Bar Board of Governors in 2006.

CONTINUING LEGAL EDUCATION: Andy Bertron reported on the latest CLE program, *Practice Before DOAH*. He noted that it was a big success, but suggested the venue be moved to the DOAH hearing rooms. The council needs to decide whether to have a one or two day seminar. Charlie Stampelos noted that the Appellate Law Section is planning an April 2006 CLE on administrative appeals and wanted to know if ALS wanted to work with that section on the course. Donna Blanton, Mary Ellen Clark and Li Nelson will work with Charlie on the program, and they will decide on co-sponsorship.

PUBLICATIONS: Cathy Sellers gave the publications report. Please get in touch with the Publications Chair if you want to prepare a *Bar Journal* article. Three potential authors have fallen through. The *Journal* is seeing a decline in the number of section articles and it is also reducing the number of pages. Mary Ellen Clark reported on the Florida state agency snapshots for the newsletter. Articles are needed by the middle of July. Donna Blanton volunteered for a profile of the Public Service Commission, Debby Kearney for the Auditor General, Cathy Sellers for the Fish and Wildlife Commission, Linda Rigot for the Division of Administrative Hearings, and Mary Ellen Clark for the Attorney General's Office.

LEGISLATIVE: Linda Rigot gave the Legislative Report. The primary APA bill, SB 1010, was vetoed by the Governor. The veto message can be found at http://www.myflorida.com/myflorida/government/laws/2005legislation/pdfs/SB_1010_veto.pdf. The

council discussed the veto message.

MEMBERSHIP: Charlie Stampelos gave the membership report – 1, 129 current members.

LAW SCHOOL LIAISON: Cathy Sellers gave the report on the Law School Liaison program. Cathy, Donna Blanton, and Rick Ellis prepared a memorandum for the council's consideration entitled: *Encouraging law student interest in Florida Administrative Law*. The three suggestions were to hold a reception with Administrative Law Judges, invite judges and practitioners to speak at administrative law classes, and invite students to attend DOAH hearings. Mary Ellen Clark indicated that she was interested in speaking on career opportunities not just law topics. Donna Blanton spoke with Bob Cohen about these suggestions and he was very supportive. Mary Ellen moved that \$1,000 be allocated for an ALJ reception. The council approved that motion unanimously.

COUNCIL OF SECTIONS: Robert Downie reported on the Council of Sections retreat. He indicated that there was a lively discussion of the new budget policies. He explained the new structure. There is a Board of Governors retreat in August. Larry Sellers is the Administrative Law Section's board liaison. Clark Jennings discussed the importance of having a voice on the Council of Sections.

WEBSITE: There was a discussion of the section's website. Charlie Stampelos talked about the Environmental and Land Use Law Section website. Joe Richard is the website committee chair for the section and he spends a large amount of time making sure the site is updated.

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MINUTES*from page 7*

UNIFORM RULES: Chris Moore reported that the Uniform Rules have been transmitted to the Governor's Office. Some corrections are needed. Scott Boyd will be sending the JAPC comments on the rules shortly.

OTHER BUSINESS: Andy Bertron moved that Jackie Werndli is in need of a laptop. Linda Rigot moved that the section split the cost with the Environmental and Land Use Law Section up to \$2,000. The motion was approved unanimously.

Robert Downie made his closing remarks as Chair. He stated it was an honor to serve as the Chair of the Administrative Law Section. He thanked everyone for their input on the certification issue and he believed that the product was much better than when it started. After exchange of gifts, he turned the gavel over to the incoming Chair, Debby Kearney.

Debby Kearney, the incoming Chair, made some remarks. She indicated that she would like the Uniform Rules to be amended. She has

asked Bobby Downie to continue to work on the certification. Andy will be heading a budget task force for the section. Booter will be handling the Long Range Planning Retreat which is scheduled for October 13-14, 2005. Many individuals requested that it be held at WaterColor again this year.

Next year's meeting will be in Tallahassee on January 6, 2006.

Debby announced the nominations for 2005-2006:

Officers:

Immediate Past Chair: Bobby Downie
Chair: Debby Kearney
Chair-Elect: Booter Imhof
Secretary: Andy Bertron
Treasurer: Chris Moore

Executive Council Members:

For 2-year Term ending June 2007:

Donna Blanton
Mary Ellen Clark
Allen Grossman
Cindy Miller – Public Utilities
Member
Li Nelson
Linda Rigot
Dave Watkins
Bill Williams

For 1-year Term ending June 2006:

Elizabeth McArthur
Charlie Stampelos

Committee Chairs:

CLE – Andy Bertron
Publications/Journal – Li Nelson
Agency Snapshots – Mary Ellen Clark
Legislation – Linda Rigot, Bill Williams, and Andy Bertron
Website – Cathy Lannon
Uniform Rules – Chris Moore
Long Range Planning – Bobby Downie
Council of Sections Liaisons – Clark Jennings and Debby Kearney
Law School Liaison – Cathy Sellers
Environmental and Land Use Law Section Liaison – Cathy Sellers
Health Law Section Liaison – Allen Grossman
Public Utilities Law – Cindy Miller
Florida Bar CLE Committee Representative – Andy Bertron

The slate was elected without opposition.

ADJOURNED.

Respectfully submitted,
Booter Imhof, Secretary

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THE FLORIDA BAR

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Governor's Veto Message of SB 1010

June 22, 2005

Ms. Glenda E. Hood
Secretary of State
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

Dear Secretary Hood:

By the authority vested in me as Governor of Florida, under the provisions of Article III, Section 8, of the Constitution of Florida, I do hereby withhold my approval of and transmit to you with my objections, Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill 1010, enacted during the 37th Session of the Legislature of Florida convened under the Constitution of 1968, during the Regular Session of 2005, and entitled:

An act relating to administrative procedures . . .

This bill amends provisions of the Administrative Procedures Act (APA) to include creating a Florida Administrative Weekly Internet website, expanding the definition of a "small business party" for the purpose of awarding attorney's fees and costs, providing for equitable tolling, exempting certain actions from petition content requirements, and providing administrative changes regarding the Administrative Procedures Committee.

I strongly support one of the bill's key provisions: electronic publication of the Florida Administrative Weekly on an Internet website managed by the Department of State. Providing public access to citizens in the rulemaking process is good public policy, and it does not require legislation. The Department of State is currently undertaking the creation of an interactive, automated rulemaking system and anticipates completion prior to the next legislative session. I look forward to its implementation.

While I support this and other public access and government efficiency efforts provided for in the bill, there are several provisions that could have negative consequences for state agencies and the public, including: increased litigation; increased agency costs and workload; the creation of agency, public and private uncertainty as to rights of appeal and effectiveness of agency orders; delays in litigation; and the vulnerability of licensing agencies with respect to the expanded group of individuals authorized to receive attorney's fees and costs. My general objections are threefold.

First, the bill expands the definition of the term "small business party" to include an additional class of individuals under which parties may receive attorney's fees and costs when the parties prevail in certain proceedings under the APA. This provision could generate unwarranted litigation that consumes limited legal, programmatic, and fiscal resources, regardless of whether an agency's actions were substantially justified.

Second, the bill codifies equitable tolling in the state. This provision extends the time for filing a petition or request for hearing if a petitioner has been misled or "lulled into inaction" by a division of the government or has filed an action in the incorrect forum. No limitation on the time period is provided in the bill and appeal rights are left open-ended. This provision would likely increase litigation and associated costs, and raises the possibility of retroactive remedies imposed years after an action is taken.

Third, the bill exempts actions relating to agency enforcement and disciplinary actions against a licensee or other person from APA petition content requirements. I believe requiring individuals appealing agency actions to provide basic information about their appeal is reasonable. Without this information, agencies will not know if there are issues of material fact and will have to refer petitions for determination through an expensive, cumbersome and time consuming process at the Division of Administrative Hearings. The streamlined informal hearing process, therefore, is severely limited by this bill.

For these reasons, I am withholding my approval of Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill 1010, and do hereby veto the same.

Sincerely,

Jeb Bush

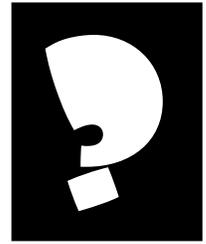
Section Budget/Financial Operations

	<u>2004-2005 Budget</u>	<u>2004-2005 Actual</u>	<u>2005-2006 Budget</u>
REVENUES			
Dues	22500	22765	28125
Affiliate Dues	100	45	125
Dues Retained by Bar	(11330)	(11452)	(14163)
CLE Courses	1000	1932	1000
Audiotape Sales	2000	5624	2000
Course Material Sales	75	4	75
Section Service Programs	2000	30	2000
Investment Allocation	4943	5024	9000
Miscellaneous	100	0	100
TOTAL REVENUE	21388	23972	28262
EXPENSES			
Staff Travel	422	1207	1147
Postage	500	143	150
Printing	300	13	50
Officer Expense	500	0	500
Newsletter	2500	1377	2500
Membership	500	0	500
Supplies	50	0	50
Photocopying	275	251	150
Officer Travel	2500	2356	2500
Meeting Travel	500	0	500
CLE Speaker Expense	100	0	100
Committees	500	102	500
Council Meetings	500	137	500
Bar Annual Meeting	1700	1412	1700
Section Service Programs	5000	0	5000
Retreat	4500	3523	4500
Public Utilities	500	0	500
Awards	500	589	500
Writing Contest	2400	0	2400
Website	5000	3255	5000
Legislative Consultant	10000	0	10000
Council of Sections	300	300	300
Misc.	500	166	500
Operating Reserve	3955	0	3955
TOTAL EXPENSES	43502	14831	43502
BEGINNING FUND BALANCE	103861	138997	128577
PLUS REVENUES	21388	23972	28262
LESS EXPENSES	(43502)	(14831)	(43502)
OTHER COST CENTER	2150	4683	671
ENDING FUND BALANCE	83897	152821	114008

SECTION REIMBURSEMENT POLICIES:

General: All travel and office expense payments in accordance with Standing Board Policy 5.61. Travel expenses for other than members of Bar staff may be made if in accordance with SBP 5.61(e)(5) (a)-(i) 5.61(e)(6) which is available from Bar headquarters upon request.

If you've got questions, we've got answers.



If you have questions or concerns about the management of your practice, our LOMAS Practice Management Advisors are an invaluable resource.

Ask us about:

- **Law Firm Management**– Firm structure, employee training, establishing policies and procedures;
- **Law Firm Automation**– Software availability and training, hardware selection and equipment evaluation assistance;
- **Law Firm Manager Training**– On-site training for employees with responsibilities that include:
 - Staff selection and supervision;
 - Performance measurement;
 - Bookkeeping functions, including trust accounting;
 - Proper docketing, calendaring and conflict checking;
 - Overall office management responsibilities
- **On-site Consulting**– Once-over review of the efficiency and effectiveness of the firm's administrative practices.

**Starting, closing or merging...
LOMAS offers unbiased, knowledgeable assistance.**

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The Florida Bar
651 E. Jefferson St.
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