



# ADMINISTRATIVE LAW SECTION NEWSLETTER

Vol. XXX, No. 1

Donna E. Blanton and Amy W. Schrader, Editors

September 2008

## Pro Bono Opportunity for Administrative Lawyers

by Andy Bertron

Finally there is a pro bono opportunity that is tailor-made for administrative law practitioners. At the June meeting of the Administrative Law Section Executive Council, incoming Chair Elizabeth McArthur established the Section's first Pro Bono Committee.

As its first project, the Committee will help the Section establish a program to assist persons with disabilities whose interests have been substantially affected by a decision of the Agency for Persons with Disabili-

ties ("APD"). Persons with disabilities or "APD clients" have an increased need for legal representation following the opinion in *J.M. v. Agency for Persons with Disabilities*, 938 So. 2d 535 (Fla. 1st DCA 2006). Before *J.M.*, persons who were adversely affected by an APD determination of eligibility for benefits or level of service were provided a "fair hearing" before an APD hearing officer. In *J.M.*, the First District Court of Appeal held that "APD must grant a formal hearing pursuant to section 120.57(1) when

material facts are in dispute and an applicant or client is determined by the agency to be ineligible for developmental services . . ." *Id.* at 541 (internal quotations omitted).

At fair hearings before APD hearing officers, APD clients often represented themselves or were assisted by family members. Now that APD cases involving disputed facts are tried before Administrative Law Judges at the Division of Administrative Hearings, APD clients have

See "Pro Bono Opportunity," page 13

## From the Chair

by Elizabeth McArthur

In a fitting tribute to my APA hero, the late Pat Dore, the theme for our section this year is ACCESS. (I was told that ACCESS was a great acronym dying for a cute saying to go with it, but have come up with nothing worthy. I will instead announce my first contest for our section members – a prize identified at the end of this column will go to the best and cutest saying that spells out ACCESS; please send all entries to me at [emcarthur@radeylaw.com](mailto:emcarthur@radeylaw.com); I will be the sole and totally subjective judge).

Professor Dore lectured and wrote frequently on the subject of access;

indeed, the title to one of her oft-cited law review articles is *Access to Florida Administrative Proceedings*.<sup>1</sup> A recurring theme throughout these materials was an emphasis on a key APA goal of broadening public access to executive branch agencies. And, as a corollary to that theme, Professor Dore advocated forcefully against the inappropriate "judicializing" of the administrative process through imposition of stringent standards that unduly restrict and overly complicate proceedings.<sup>2</sup> Professor Dore would be dismayed, to put it mildly, over the complexity that has seeped into

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**CHAIR’S MESSAGE**

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the APA. For Professor Dore, the most important thing about the APA was access: The administrative process should not be a mystery; it should not be necessary for individuals whose interests are being decided by an agency to arm themselves with lawyers to navigate through an administrative hearing. But as described in articles you will read in this newsletter, the reality is that administrative litigation at DOAH can be “intimidating and overwhelming,” or at least seem so to persons not familiar with the proceedings.

Hopefully, you have already read about and gotten involved in our section’s primary new initiative for this year, featured in the August 1, 2008, issue of *The Florida Bar News*; if not, you will read about it in this newsletter. The seeds for this initiative were planted by my predecessor, Andy Bertron, who discussed in several of his From the Chair newsletter columns the exploding need for administrative law expertise to assist disabled persons in Agency for Persons with Disabilities (“APD”) proceedings. As my first order of business as section chair, I appointed the section’s first Pro Bono Committee, and Andy Bertron, who deserves all the credit for kicking off this wonderful idea, agreed to serve as the committee chair. We are also coordinating with lawyers within

the APD, including its general counsel, John Newton, and APD attorney Julie Waldman, who is also serving on our committee. Please read Andy’s article in this newsletter about our ideas for this project. Please also read the article and APD agency snapshot, both submitted by Julie Waldman and John Newton, who volunteered to fill us in on the nature of these APD administrative hearings and how we can help. This is an important and exciting project, and we hope you share our enthusiasm and sign up soon. The most important part of access to administrative proceedings is that the access be meaningful. Our help is sorely needed to improve the process for all involved.

I also cannot claim credit for the second major access-related project: to improve, modernize, and standardize access to agency final orders. But I hope I will be able to take credit down the road for helping to advance the cause. This project involves spreading the word about a provision in the 2008 APA legislation that authorizes agencies to fulfill their final order access obligations<sup>3</sup> by providing their final orders to DOAH so that DOAH can make them available on its well-developed website. As much as the internet has evolved, it is frustrating that there has not been any move toward a standardized electronic means of publicly accessing all agency final orders. Instead, some (but not all) agencies continue to contract with private reporter services,

while others make their final orders available at their headquarters in Tallahassee (convenient for me, but not for all members of the public). Our goal will be to help educate agencies about this new legislation and urge them to inform themselves of the potential cost savings of meeting their final order obligations this way instead of through private contractors or through their own investment of time, staff, space and equipment. In these days of budget squeeze, this seems like the proverbial no-brainer. Let me hear from our section members who are agency lawyers to volunteer to help with this project.

Related to this same goal of improving, modernizing, and standardizing access to agency final orders is yet another project started by Andy Bertron that I will continue. (Andy made things very easy for me.) Last year, Andy appointed a committee whose initial purpose was to develop recommendations for changing the uniform citation appellate rule for administrative final orders. As Andy explained in last year’s newsletters, the appellate rule providing the default form for citing to the Florida Administrative Law Reports does not comport to the current reality that that private reporter service is very under-inclusive, in that it does not cover all agencies and it does not report all final orders for those agencies it does include. Today, many more agency final orders can be obtained by anyone with internet access, from the DOAH website ([www.doah.state.fl.us](http://www.doah.state.fl.us)) or the individual agency’s website.

The appellate rule review committee was chaired by Administrative Law Judge Linda Rigot, and included members Donna Blanton and Daniel Nordby, and Administrative Law Judges Li Nelson and Kent Wetherell. After discussion at last year’s long-range planning retreat, the executive council asked the committee to review a few additional appellate rule provisions related to administrative appeals, including provisions related to the manner in which administrative appeals are initiated, the record in administrative appeals, and stays pending an administrative appeal. At the annual meeting in Boca Raton in June, the committee presented its recommendations, which were approved

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- Elizabeth W. McArthur, Tallahassee** ([emcarthur@radeylaw.com](mailto:emcarthur@radeylaw.com)) ..... **Chair**
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by the executive council. We have sent these recommended appellate rule changes to the administrative law subcommittee of the appellate rules committee for their consideration. We look forward to working with them and providing our section's support for this project.

I am so grateful for the fine work and dedication of our immediate past chair to lay the groundwork for these important projects, as I am for the countless hours of work by our appellate rules committee to develop such a good product. These ACCESS projects will keep us busy this year; but there are more we can, and would like to, add to our list. But we need more help (to steal Andy's phrase from his article in this newsletter, this means YOU!). Contact me, or any of the executive council members, and let us know how we can put you to work. Every one of us has a stake in this section, in working together to share our knowledge of and interest in administrative law. We need you to help make our section better.

Oh, and that prize? A prime case in your geographic area, complete with pro-bono hour credit, a no-expenses-paid golden opportunity to represent a person whose substantial interests are being determined in a formal APD hearing. And if the winner cannot accept that prize (such as because she or he is a judge), then the substitute prize is appointment to the ALS committee of your choice. (I will alert my computer person to the impending overload of contest entry emails about to overtake our system.)

#### Endnotes:

<sup>1</sup> Dore, *Access to Florida Administrative Proceedings*, 13 Fla. State U. L. Rev. 965 (Winter 1986).

<sup>2</sup> For example, in her *Access* article, Professor Dore noted that a principle purpose for adopting the modern APA was "broadening public access to the precedents and activities of agencies." *Id.* at 1038, n. 300. She argued that statutory access standards to administrative proceedings "should not be infused with judicially formulated requirements" *id.* at 1030; criticized one court for manipulating an access requirement to add a more stringent standard, *id.* at 1046; and was critical of procedures that would "further judicialize this process. In the end, the reformists' goals will have been sabotaged[.]" *Id.* at 1062.

<sup>3</sup> Ch. 2008-104, § 3, Laws of Fla. (2008), amending § 120.53(2)(a), Fla. Stat.

# Need is Great for Pro Bono Lawyers to Assist Those Seeking Services from APD

by Julie Waldman and John D. C. Newton, II

The Agency for Persons with Disabilities (APD) works in partnership with local communities and private providers to assist people who have developmental disabilities and their families. APD also provides assistance in identifying the needs of people with developmental disabilities for supports and services such as wheelchair ramps and other home accessibility improvements, assistance with household chores and food preparation, help with shopping and other errands, day programs for vocational pursuits and leisure activities, and behavioral programs.

Supports and services are developed and delivered in natural community settings, such as the individual's home or a group home, and serve the goal of avoiding institutionalism whenever possible. Additionally, the supports and services authorized under the APD programs are expected to be used to supplement the supports already provided by family, friends, neighbors and the community. It is only by involving the recipient in community-inclusive supports and experiences that he or she can be fully integrated into the community. In many cases, needed supports and services are funded through Medicaid Waiver programs.

Medicaid is a cooperative federal-state program that enables states to furnish medical assistance to families and individuals who are unable to meet the costs of necessary medical services. Preceding authorization for delivery of any Medicaid services, APD makes eligibility determinations for such services pursuant to section 393.065, Florida Statutes. For a person to be eligible for APD services, he or she must be at least three years old and have a confirmed diagnosis of a disorder or syndrome that is

attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that creates deficits in adaptive behavior. If an applicant is determined to be eligible for APD services, he or she is then further assessed to determine eligibility for the Medicaid Waiver. If APD determines the applicant is eligible, he or she is then placed on a waiting list for APD services, which are provided as funding becomes available. If an applicant is determined to be ineligible for APD services, he or she is provided with a written notice of this adverse decision.

Florida has two Medicaid programs administered by APD: the Home and Community-Based Waiver Program (the HCBS "big" waiver) and the Family and Supportive Living (FSL) Waiver, commonly referred to as the "little" waiver. The HCBS Waiver currently has no cap and the FSL Waiver has a cap of \$14,850 annually for services. There are many types of services available under these Waiver programs, including caregiver training and support, case management, chore services and housekeeping, companion services, provision of consumable medical supplies, counseling and mental health services, behavior analysis, day training programs, homemaker services, non-residential supports and services, occupational and physical therapy, residential habilitation, respite care, speech therapy and transportation. Eligible individuals may receive these and other similar services in accordance with Rule 59G-13.080, Florida Administrative Code, "Home and Community-Based Services Waivers."

When an individual who is currently being served on the HCBS Waiver needs particular itemized

*continued...*



## Agency Snapshot

# Agency for Persons with Disabilities

### Agency Head:

Jim DeBeaugrine  
Director  
4030 Esplanade Way, Suite 380  
Tallahassee, Florida 32399-0950  
(850) 488-4257

### Type of agency:

APD is a Governor's Agency. The Agency serves the needs of Floridians with developmental disabilities. APD works in partnership with families, local communities, and private providers to assist people who have developmental disabilities and their families. APD also assists in identifying the needs of people with developmental disabilities for supports and services. APD's service includes providing evaluation and training for criminal felony defendants determined incompetent to proceed due to retardation or autism; administering Florida's Medicaid Waiver Program to provide a multitude of services to persons with developmental disabilities to enable them to live in the community and avoid institutionalization; licensing of group homes; and developing, planning, supporting, and implementing a wide range of programs to prevent, ameliorate, or cure developmental disabilities. The Agency operates three Developmental Disability Centers: Gulf Coast Center in Fort Myers, Tachachale in Gainesville, and Sunland in Marianna. It also operates the Mentally Retarded Defendant Program in Chattahoochee, which provides competency training for criminal felony defendants who courts have determined require secure placement. The Agency's mission supports persons with developmental disabilities in living, learning and working in their community.

### General Counsel:

John D. C. Newton, II  
4030 Esplanade Way, Suite 380  
Tallahassee, Florida 32399-0950  
(850) 414-8052

### Educational background of general counsel:

A.A., South Florida General College, 1972  
B.A., Florida State University, 1974  
J.D., Florida State University College of Law, 1977

### Agency Clerk's name, telephone, physical location for filing, hours of operation:

Gail Scott Hill  
(850) 414-8092  
4030 Esplanade Way, Suite 380  
Tallahassee, Florida 32399-0950  
8:00 a.m. to 5:00 p.m.

### Number of lawyers on staff:

Five lawyers in APD Central Office  
Five lawyers in the field  
The Agency also benefits from and relies upon the services of lawyers of the Department of Children and Families throughout Florida. In addition, lawyers from the Office of the Attorney General represent the Agency in some 700-plus administrative hearings per year.

### Kinds of cases handled by the agency; percentage that involves use of the APA:

More than 70 percent of Agency cases are fair hearings involving disputes about eligibility for services or concerning which services are appropriate. These cases are heard by the Division of Administrative Hearings. In addition, the Agency often is a party to rule challenges or involved in challenges to Agency for Health Care Administration rules. The Agency is also routinely involved in some fashion in criminal matters throughout the state because of its role in competency to proceed issues. Finally, the Agency, like others, occasionally finds itself in state circuit court or federal court in cases involving the validity of statutes, rules, or policies or dis-

agreements with vendors or would-be vendors.

### How does Chapter 120 affect the mission of the agency?

Chapter 120 provides the framework that ensures Agency clients receive a fair hearing any time they dispute an Agency decision. It also satisfies a federal requirement for a fair hearing process for the Medicaid Waiver.

### How does the rulemaking process affect the agency?

Like most agencies, APD must adopt rules. The formal rulemaking process supplements APD's other efforts to ensure that it obtains and considers the views of affected individuals and organizations and their advocates. From time to time, rulemaking may slow the Agency's implementation of legislative directives.

### Tips for practice before the agency

The Agency and its employees are committed to serving their clients. The Agency is always willing to consider any proposal to resolve issues without unnecessary litigation or delay. Always explore an agreed-upon resolution.

Agency matters are often affected by a number of state and federal statutes, rules, and regulations. These include rules and statutes for DCF and AHCA at the state level and for Centers for Medicare and Medicaid Services (CMS) at the federal level. It is always good to make sure all the relevant law has been identified.

Make sure you understand what relief the Agency can provide in any given situation. In many cases parties seek and may well need services or support the Agency cannot provide because the statutes do not provide for them or because of budget limitations. Often the best thing for a client can be identifying other sources of support that the Agency cannot provide.

## Agency Snapshot

# Florida Public Service Commission

*Commission's Mission Statement:  
To facilitate the efficient provision  
of safe and reliable utility services  
at fair prices.*

### Background:

The Florida Public Service Commission ("Commission") was originally created by the Florida Legislature in 1887 to regulate the rates charged by Florida's railroads for passengers and freight service. As Florida's population grew and its industry diversified, the Commission's jurisdiction expanded. At one time, the Commission regulated the rates charged by railroads, motor carrier transportation companies, and airlines. Today, the Commission exercises regulatory authority over investor-owned electric, natural gas, telephone, water, and wastewater utilities in one or more of three key areas: (1) rate base/economic regulation; (2) competitive market oversight; and (3) monitoring of safety, reliability, and service. The Commission exercises limited regulatory authority over municipal and rural electric cooperatives.

The Commission carries on its work through two primary functional units: The Office of the Executive Director and the Office of the General Counsel. These Offices are charged with implementing chapters 350, 364, 366, 367, 368 and 427, Florida Statutes, and sections 403.064, 403.501-403.539, and 403.9401-403.9425, Florida Statutes. The Commission's promulgated rules are located in chapter 25 of the Florida Administrative Code.

The Commission is headed by five Commissioners. Commissioners are now nominated by the Florida Public Service Commission Nominating Council, appointed by the Governor, and confirmed by the Senate. The Commission Chairman is elected by a majority vote of the Commissioners to serve as chair for a period of two years. The Chairman is the chief administrative officer of the Commission, presiding at all hearings and conferences when present, setting Commission hearings, and perform-

ing those duties prescribed by law. In the Chairman's absence, the senior member of the Commission panel presides. A majority of any Commission panel constitutes a quorum, and the Commission cannot take formal action in the absence of a quorum. A majority vote of the quorum determines Commission action. Where only two Commissioners are assigned to a proceeding and they do not agree on a final decision, the Chairman of the Commission, after appropriate review of the record, shall cast the deciding vote. When the Chairman is one of a two-member panel and the panel does not agree on a final decision, the matter shall be referred to the full Commission for disposition. In such an event, the full Commission shall review the record as appropriate.

The Commission conducts most of its regulatory business at its regularly scheduled Agenda Conferences, which are usually every other Tuesday. At these conferences, the Commission reviews the staff recommendations for dockets on the agenda. Depending on the procedural status of the dockets, the Commission entertains comments from the parties and the public. The Commission's order may adopt, reject, or modify the staff recommendations. Orders issued by the Commission are available on its website: <http://www.psc.state.fl.us/dockets/orders/>.

Commission final orders involving the rates or service of electric, gas, or telephone companies are appealed directly to the Florida Supreme Court. Commission final orders related to water and wastewater are appealed to the First District Court of Appeal. In addition, under the Federal Telecommunications Act of 1996, some Commission decisions implementing federal law are reviewable by complaint in the U.S. District Court for the Northern District of Florida.

### Commissioners:

Chairman Matthew M. Carter, II (Appointed through 01/01/10) (Current Chair)

Commissioner Lisa Polak Edgar (Appointed through 01/05/09)

Commissioner Katrina J. McMurrian (Appointed through 01/01/10)

Commissioner Nancy Argenziano (Appointed through 01/01/11)

Commissioner Nathan A. Skop (Appointed through 01/01/11)

### Executive Director:

Mary Andrews Bane  
Office of Executive Director  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
(850) 413-6068

The Office of the Executive Director advises the Commission on all technical and policy matters under the Commission's jurisdiction and, in coordination with the Office of the General Counsel, serves as the Commission's liaison with federal and state agencies as well as the Florida Legislature. Also, the Office of the Executive Director has authority over all divisions and offices, except the Office of the General Counsel.

### Agency Clerk:

Ann Cole  
Office of Commission Clerk  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
(850) 413-6770

The Office of Commission Clerk is responsible for accepting official filings, maintaining the official case files, coordinating the Commission's records management program, and issuing all commission orders and notices. The hours of operation are from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays. For information on Dockets and Filings, please refer to <http://www.psc.state.fl.us/dockets/> or call the Office of the Commission Clerk.

### General Counsel:

Michael G. Cooke  
Office of the General Counsel

2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
(850) 413-6199

The General Counsel, Michael G. Cooke, is responsible for all legal advice provided to the Commission and all legal matters under the Commission's jurisdiction. He supervises the attorneys and staff in the Office of General Counsel and advises the Commission on ethics law issues and other non-regulatory matters. The Office of General Counsel, in coordination with the Office of the Executive Director, serves as the Commission's liaison with federal and state agencies as well as the Florida Legislature and political subdivisions of the state. In the course of evidentiary proceedings before the Commission, the Office of the General Counsel and its sections are responsible for presentations of staff positions in the proceedings, including cross examination of witnesses and presentation of staff testimony.

**Number of Lawyers on Staff: 21**

**Kinds of Cases:**

**Utility Regulation,  
Telecommunications  
Arbitration**

The Office of the General Counsel is divided into three sections: (1) Appeals, Rules, and Mediation Section; (2) Economic Regulation Section; and (3) Competitive Markets and Enforcement Section. The Appeals, Rules, and Mediation Section is responsible for defending Commission orders on appeal, defending the Commission rules challenged before the Division of Administrative Hearings ("DOAH"), and representing the Commission before state and federal courts. The Section supports technical divisions in making filings with, or presentations to, other federal, state or local agencies. The Section advises in the promulgation of rules, and attends or conducts rulemaking hearings at the direction of the Commission. It also offers mediation services to parties to Commission proceedings.

The Economic Regulation Section is responsible for legal issues related to electric, natural gas, water and wastewater industries. The Competitive Markets and Enforcement Section is responsible for legal issues

related to the telecommunications industry. Both sections are responsible for conducting discovery, presenting staff positions, presenting any staff testimony, and cross-examining other parties' witnesses in matters involving evidentiary hearings before the Commission or an Administrative Law Judge. In conjunction with the appropriate technical staff, the Office of General Counsel prepares recommendations to the Commission and prepares written orders memorializing Commission decisions.

**APA Interaction:**

The Commission is subject to the Administrative Procedure Act (Chapter 120) and is generally subject to the Uniform Rules of Procedure. However, the Commission has a number of specific exemptions from the Uniform Rules, so a practitioner must be sure to consult Chapters 25-22 and 25-40, Florida Administrative Code. In addition, the Commission has several agency-specific procedural provisions in section 120.80, Florida Statutes. While the Commission has the author-

ity to send cases to DOAH for hearings before an Administrative Law Judge, the vast majority of Chapter 120 proceedings are heard by the five-member Commission or by a panel of two or more Commissioners.

**Practice Tips:**

The Commission has several unique procedural practices: (1) the Commission uses pre-filed written testimony in cases heard by the Commission or a Commission panel; (2) the Commission has strict rules for the classification and handling of confidential materials; and (3) the Commission makes available options for the reconsideration of final Commission orders. Questions about these or any other procedural matters may be directed to any member of the General Counsel's office.

For an excellent article on practicing before the Commission, please refer to Charles W. Murphy's article, *Public Service Commission Practice*, which was published in *The Florida Bar Journal* in its January 1995 issue (69 Fla. B.J. 30).

## Foreclosure Hotline Helps Florida Homeowners

Florida lawyers are now available to assist low-income homeowners facing foreclosure.

The Florida Bar (in conjunction with Florida Legal Services and the Real Property, Probate & Trust Law Section) has launched a foreclosure hotline to assist Florida residents who are facing or fear foreclosure on their home.

Callers will be put in contact with a free private attorney who will collect information and attempt to resolve the problem.

If a caller qualifies (is not already in foreclosure\*\*), he should call 1-866-607-2187. Bar staff will collect information from the callers and Florida Legal Services will screen the calls.

### BE A VOLUNTEER!

Lawyers interested in becoming a volunteer can contact either Andrew O'Malley at [aomalley@cowmpa.com](mailto:aomalley@cowmpa.com) or Adele Stone at [astone@atkinson-diner.com](mailto:astone@atkinson-diner.com) with your contact information and the judicial circuit in which you are located. Volunteer hours spent on this project can count toward pro bono hours.

\*\* If the caller's home is already in foreclosure proceedings, or there is an auction date set by his lender, the volunteer attorneys will not be able to assist him and he should contact his local legal aid office, or he can be referred through The Florida Bar Lawyer Referral Service [LRS] at 1-800-342-8011. Referrals made through LRS are not based on income eligibility or ability to pay for an attorney.

# Minutes – Administrative Law Section Executive Council Meeting

February 21, 2008

## I. Call To Order

The following participated in the ALS Executive Council meeting on February 21, 2008:

**Present in person:** Andy Bertron, Judge Li Nelson, Elizabeth McArthur, T.K. Wetherell, II, F. Scott Boyd, Bill Williams, Clark Jennings, Allen Grossman, David Watkins, Seann Frazier, Judge Linda Rigot.

**Present via telephone:** Cathy Sellers, Shaw Stiller, Donna Blanton and Wellington Meffert.

**Absent:** Larry Sellers, Michael Cooke, Debby Kearney, Daniel Nordby

## II. Preliminary Matters

### A. Minutes - October 26, 2007

The minutes of the October 26, 2007 and January 9, 2008 Executive Council meetings were approved.

### B. Treasurer's Report – Cathy M. Sellers

Cathy Sellers provided the Treasurer's Report, indicating that the section is spending conservatively and remains on budget at present. Ms. Sellers reported that the projected revenues for the Practice Before DOAH CLE may be slightly overstated as a recording problem will prevent audio tapes from being available. However, if the Pat Dore Conference does well, the budget will remain on track.

### C. Chair's Report – J. Andrew Bertron, Jr.

Andy Bertron provided the Chair's Report. He indicated that the Government Lawyers Section contacted him to invite the Administrative Law Section's participation in a Loan Forgiveness Committee being formed. It was decided that Clark Jennings would attend.

Mr. Bertron also discussed the

formation of a nominating committee to be assembled and ready for the summer.

## III. Committee/Liaison Reports

### A. Continuing Legal Education – F. Scott Boyd

#### 1. Practice Before DOAH –

Scott Boyd discussed the Practice Before DOAH seminar which was successfully conducted on November 16, 2007 in Tallahassee, but involved an error in the recording of audio tapes of the presentation.

#### 2. Pat Dore Administrative Law Conference

Scott Boyd provided a report regarding potential locations of the Pat Dore Conference, including the University Center and the Leon County Civic Center. Discussion also included whether or not to conduct a reception in connection with the Pat Dore Conference, and whether the budget would allow for such a reception. Topics and potential speakers for the Pat Dore Conference were also discussed.

The Executive Council conducted a detailed discussion of the fees that should be charged for the Pat Dore Conference. Most attorneys attending the Pat Dore Conference are governmental lawyers. Clark Jennings noted that recent budgetary constrictions have caused fewer agencies to pay for continuing legal education seminars such as the Pat Dore Conference. If fees are raised for this conference, it would make it more difficult for government lawyers to attend.

Jackie Wernkli reported that the average cost for the Pat Dore Conference, at approximately \$100.00 may not cover all costs given the use of a new and slightly more expensive venue. Jackie reported that other sections charge \$325 - \$400 for similar conferences.

The Section discussed whether different fees might be charged for government or private practice attorneys. Jackie indicated that the Administrative Law Section may have to pay the difference for any discount offered to government lawyers, but that she would verify whether The Florida Bar would impose such a requirement.

Dave Watkins disagreed with the proposition of having different prices for government and private lawyers. He suggested instead that the program should be made affordable to everyone. Judge Li Nelson and Bill Williams agreed with that proposition.

Judge Rigot suggested that the reception be eliminated in order to keep the price of the seminar affordable. Clark Jennings made a motion to eliminate the reception. Allen Grossman amended the motion to alternatively find a sponsor. Clark Jennings agreed to that amendment. Dave Watkins suggested an alternative to keeping the reception if the price does not increase. The motion carried.

Clark Jennings then suggested a \$50 differential between governmental and non-governmental lawyers. Allen Grossman made a motion to that affect and Clark Jennings seconded it. The motion carried.

### B. Publications – Elizabeth W. McArthur

#### 1. Newsletter –

Donna Blanton reported that an issue would be coming out in March 2008. It would contain a lead article on bid protests as well as an agency snapshot prepared by Booter Imhof.

#### 2. *TFB Journal*

No report.

### C. Legislative – Wellington H. Meffert/Linda M. Rigot/ William E. Williams

Bill Williams provided a report on



numerous bills pending before the legislature. Bill's discussion included HBO8-13, SB704, which proposes a stay of the use of unpromulgated rules upon filing of the petition as well as an increase in potential attorneys' fees; SB1614 regarding placement of inmates and allowing Administrative Law Judges to appoint Public Defenders; and HB991 discussed by Judge Rigot.

**D. Public Utilities Law –**  
No report.

**E. Membership – T. Kent Wetherell, II**

Judge Wetherell provided the membership report. There are currently 1,256 members.

**F. Webpage –**  
No report.

**G. Uniform Rules of Procedure**

Judge Rigot reported that the revised rules became effective December 24, 2006. Notably, the requirement for bid protest bonds now allows the bonding company to simply be registered to do business in Florida, rather than limiting bonding companies to Florida registries.

Donna Blanton asked why a sample rule challenge petition was not contained in the uniform rules. Bill Williams reported that it was decided that a single formal petition would be presented in the uniform rules.

**H. Board of Governors Liaison**

Mr. Sellers was absent. However, a written report was contained in the Council meeting materials.

**I. Law School Liaison**

Bruce Lamb reported that he has contacted Stetson, but has yet to have a response regarding performing DOAH proceedings there.

**J. CLE Committee Liaison**

Allen Grossman was appointed as new committee chair.

**K. Council of Sections**

Clark Jennings reported that the Council of Sections had not met since the last Administrative Law Section

meeting, so there would be no report.

**L. Section/Division Liaison**

**1. Environmental and Land Use Law**

Cathy Sellers reported that the Environmental Section is switching to a electronic newsletter and conducting webinars for up to 30 people. The Environmental Section would also be conducting a law school liaison program and holding at a retreat in Costa Rica.

**2. Health Law**

Allen Grossman was present and provided a brief update on Health Law Section activities.

**3. YLD Liaison**

No report.

**M. DOAH Update – Lisa S. Nelson/Linda M. Rigot/T. Kent Wetherell, II**

Kent Wetherell reported that Judge Don Davis is retiring and that Judge Wetherell will be reassigned to the Middle District, general jurisdiction.

**IV. Old Business**

No old business to report.

**V. New Business**

**A. Invitation to comment on preliminary proposal related to the attorney-client privilege/work protections in the public sector.**

The Florida Bar's Task Force on attorney-client privilege includes a Public Sector Sub-committee. The Public Sector Sub-committee prepared an Interim Report dated January, 2008. The Report addressed an erosion of the attorney-client privilege and work product doctrine in the public sector and made specific recommendation for improvement.

Among the recommendations were amendments to Chapter 119, Florida Statutes, to prevent the disclosure of work product prepared by attorneys representing public agencies, even after the conclusion of litigation. That first recommendation also included permission to conduct substantive discussions between public

agencies and their attorneys without being required to transcribe those meetings. A second recommendation would prevent parties in litigation from using public records laws to obtain documents they might otherwise obtain through normal discovery procedures.

The Council discussed the proposal to create statutory language that would prohibit the use of public records requests by parties in litigation. Cathy Sellers reported that the Board of Governors would review the Sub-committee's recommendations and they may become proposed legislation.

Seann Frazier made a motion that the Administrative Law Section take no position on the Interim Report, other than to oppose amendments to Section 119.0710, Florida Statutes. Donna Blanton seconded. The Council then discussed the proposal. Cathy Sellers provided insight as to where the Sub-committee's recommendations were derived. Andy Bertron suggested that we ask for more time to consider the proposals. Judge Rigot indicated that the matter may be acted on quickly and that if input was to be received from the Administrative Law Section, it should be made quickly. Allen Grossman suggested that the Administrative Law Section make no comment at all except as it related to federal prosecutors. Bill Williams suggested that the Section comment on the legislation just to suggest that its unnecessary and may even be harmful. Allen Grossman opposed all changes to Chapter 119 and 286 that were contained in the Sub-committee's legislative proposal. Judge Nelson moved create an Ad Hoc Committee (to include members of the Legislative Committee plus Allen Grossman) to discuss opposition of both proposed recommendations and to prepare a written response to be filed with the chair. Seann Frazier seconded the motion. The motion carried. F. Scott Boyd abstained from the discussion and any vote on the matter.

**B. 2008-2009 Section Preference Forum**

**1. Recommendation for Board of Governor Liaison, council for Sections representative and CLE Committee**

*continued...*

**MINUTES - EXEC. COUNCIL***from page 9*

representative.

2. Allen Grossman will serve as the next Chair of the Council of Sections. The Executive Council enlisted Seann Frazier to serve as the Administrative Law Section's new Liaison Council of Sections going forward.

3. The Executive Council unanimously supported retaining Larry Sellers to continue his service as Board of Governor's Liaison. The Executive Council also recommended that Cathy Sellers continue to serve as CLE Committee Liaison.

**C. Section Leadership Conference July 11, 2008.** Elizabeth McArthur and Seann Frazier will attend the next Leadership Conference conducted by The Florida Bar. Clark Jennings moved to pay the \$50 registration fee. The motion was seconded and approved.

**VI. Informational**

A. The next meeting will occur June 20, 2008, in conjunction with The Florida Bar's Annual Meeting at the Boca Raton Resort and Club.

B. Andy Bertron relayed Booter Imhof's suggestion to have the Section pay for the Chair's room at the Bar Convention for two nights in-

stead of one. Allen Grossman indicated it was a good idea. As Chair, Andy Bertron insisted that any such motion not be applied to this year. However, Dave Watkins stated that the additional reimbursement should be made available immediately.

C. The Administrative Law Practice Manual. Andy Bertron reported that he would follow up with Booter Imhof on the manual.

**VII. Adjournment**

On motion, duly seconded, the meeting was adjourned.

Respectfully submitted,

Seann Frazier

# Minutes – Long Range Planning Retreat February 22, 2008

**Present in person:** Elizabeth McArthur, Judge Li Nelson, Andy Betron, Judge Kent Wetherell, F. Scott Boyd, Bill Williams, Clark Jennings, Allen Grossman, Dave Watkins, Judge Linda Rigot, Seann Frazier and Jackie Werndli.

**I. Reconsideration of Legislative Lobbying Positions**

(Attachment 1):

The Council met to reconsider adopting legislative lobbying positions set to expire in 2008.

F. Scott Boyd abstained from all votes considering legislative lobbying positions.

Lobbying positions were discussed one at a time. First legislative lobbying position which opposes legislation that undermines the rulemaking requirements of the Administrative Procedure Act by allowing statements of Agency policy without formal rule-making was moved to be re-adopted, duly seconded and approved.

The second legislative position that opposes any amendment to Chapter 120, Florida Statutes, or other legislation to deny, limit or restrict points of entry to administrative proceedings

was discussed. Judge Nelson moved to readopt it and the motion carried.

The third legislative exemption concerning exemptions or exceptions of the Administrative Procedure Act being located within Chapter 120, was moved to be re-adopted, duly seconded and the motion carried.

The fourth legislative position that supports the use of mediation, so long as it is voluntary and not mandatory was moved, seconded and adopted.

The fifth legislative position concerning support of uniformity of procedures for Chapter 120 proceedings was discussed, moved for re-adoption, duly seconded and the motion carried.

The sixth legislative position, as presented read as follows:

Opposes amendment to Chapter 120, Florida Statutes, that limits, restricts, or penalizes full participation in the administrative process in the absence of compelling justification or non-anecdotal evidence which demonstrates that the existing provisions of law are not adequately protecting the administrative due process rights of all participants.

The amendment received a great deal of discussion.

Bill Williams suggested an amendment so that the position would also include opposition to amendments in Chapter 119 or other statutes, such as Chapter 287 or Chapter 403, Florida Statutes. Bill Williams also discussed the potential for removing the "compelling justification" clause. Judge Rigot suggested changing "without compelling justification" to "in the absence of" such justification.

Judge Wetherell suggested a new general position that administrative courts be fully and fairly funded so that the public will have adequate protection. Judge Rigot discussed the current funding mechanisms of the Division of Administrative Hearings. Dave Watkins proposed language for such legislative position. After discussion, the following language resulted:

Proposes legislation that would restrict funding in a manner that would limit access to administrative tribunals.

Bill Williams reported that the Administrative Law Section should carefully consider whether it should

adopt legislative positions on issues of funding as opposed to procedure. Judge Nelson suggested that adequate funding could be considered to be part of the Administrative Law Section's legislative policy number 6. Judge Wetherell suggested tabling the discussion, researching Florida Bar's position on sections addressing lobbying positions on funding, and draft a specific proposal for the next official meeting.

Allen Grossman then revisited legislative position number 6 and suggested further changes to the language. Allen Grossman suggested the removal of the term "compelling justification." Instead, Allen suggested the word "generally." Elizabeth McArthur suggested that change was not necessary. Bill Williams moved the proposed change, which was seconded by Judge Nelson. Judge Wetherell and Clark Jennings opposed the measure.

## **II. Discussion of possibilities for voluntary lawyer program for Agency for Persons With Disabilities for DOAH proceedings**

Allen Grossman led the discussion of this possible volunteer program. Judge Rigot indicated that she had conducted APD proceedings as had Judge Nelson and Judge Wetherell. Most cases involved seeking eligibility for assistance or dispute about the level of care authorized. Cases are usually brought by a caretaker who represents the person receiving benefits. The proceedings are limited in scope but can involve some medical diagnoses and testimony.

These disputes were once administered by the Department of Children and Family Services, but have since been moved to the Agency for Persons With Disabilities and then to DOAH a year or two ago. The Attorney General's office generally represents the Agency and therefore cannot participate in representing beneficiaries.

Allen Grossman reported that the program represented a great opportunity for pro bono for young administrative litigators. Judge Wetherell and Andy Bertron discussed an educational program to train sup-

port coordinators as a supplement to any organized program enlisting voluntary lawyers. Bill Williams suggested that a formal program could be coordinated with the Bar's Health and Environmental sections, whose members are experienced in administrative law.

Allen Grossman suggested advertising for volunteers through the Section's website or listserv. F. Scott Boyd suggested that the APD program could be mentioned at the Pat Dore Conference.

Clark Jennings indicated that he would inquire about conflict issues for state agency lawyers (other than the Attorney General's office which is already conflicted).

Elizabeth McArthur indicated that she would speak with John Newton of APD to obtain additional information. Judge Rigot suggested that the Council should invite John Newton to the next meeting to discuss participation and perhaps to prepare a newsletter article. It was additionally suggested that a handbook should be prepared to provide basic information to those that might want to provide their volunteer services.

## **III. Long range planning and a project to assess and recommend changes to appellate rules related to administrative proceedings.**

### **A. Uniform Citation System Rule for Florida Administrative Agencies**

It was noted that FALR is not purchased by a majority of administrative practitioners. Most lawyers use Westlaw or Lexis and DOAH has contracted with Lexis. Agencies often index their orders. However, some agencies use FALR, and some go back and forth. In other instances a different reporter is used. For example, the Florida Department of Transportation's orders are indexed through the Florida Municipal Code Corporation. Thus, there are variety of places where final orders may be stored.

Andy Bertron has indicated that the Legislature may require agencies to uniformly index their final orders

or encourage higher compliance with the requirement to send their final orders to DOAH.

Judge Rigot suggested that a new law last year required DOAH to report the percentage of final orders sent back to DOAH.

Allen Grossman raised a concern regarding financial issues to the agencies by requiring use of a uniform reporting service. Judge Wetherell indicated that web-based services are not overly expensive. Allen Grossman suggested that council members speak with Chief Judge Cohen at DOAH to discuss costs and methods of indexing.

Andy Bertron will form a committee for formal citation. Elizabeth McArthur joined and Judge Wetherell volunteered to participate. The committee may suggest changes to the FSU Style Manual which currently does not adequately address administrative orders.

F. Scott Boyd abstained from this discussion.

### **B. Judicial Review of Administrative Actions - Stays**

It was reported that the Florida Supreme Court may rule on the removal of automatic stays for state agencies (as recommended by the Florida Bar).

Judge Nelson indicated that one problem in Section 120.68 is that there is no standard for most motions for stay, whether it might be to preserve the status quo, for good cause, or the likelihood of success on appeal. Elizabeth McArthur indicated it might be too cumbersome to list all standards, but noted that the Rule currently only addresses discipline against licensees. Bill Williams suggested a potential amendment of Section 120.68 instead of the appellate rules. Judge Nelson indicated that it might be easier to obtain. The group decided to discuss the matter further.

### **C. Judicial Review of Administrative Actions - The Record**

The current appellate rule has gaps in the definition of the "record." It is slightly different than the definition provided in Rule 9.200. For example, there is no description of what constitutes the record in an

*continued...*

**MINUTES - RETREAT***from page 9*

immediate final order or emergency order proceeding.

Elizabeth McArthur suggested that we begin with amendments to the uniform citations and later decide other appellate rule issues.

**IV. Open Floor Discussions**

Allen Grossman suggested an infusion of new participants in the Executive Council in order to keep participation active.

Clark Jennings suggested designating former Chairs as permanent ex officio officers in order to get new members onto the Board. The Envi-

ronmental Section apparently uses this method. Allen Grossman recommended to the Executive Council that we adopt such a measure.

Whereupon, the meeting was adjourned.

Respectfully submitted,  
Seann Frazier

# Minutes – Executive Council Conference Call March 12, 2008

## I. Call to Order: Andy Bertron, Chair

**Present on the conference call:**  
Andy Bertron, Judge Linda Rigot, Wellington Meffert, F. Scott Boyd, Shaw Stiller, Elizabeth McArthur, Larry Sellers, Seann Frazier, Cathy Sellers, Debby Kearney, Judge T. Kent Wetherell, II, Donna Blanton, Judge Lisa S. Nelson, Daniel Nordby, Dave Watkins.

## II. Section Legislative Positions

- A. Rollover Current Positions 1 through 5.
- B. Revised Language for Current Position 6
- C. New Position - Funding Support for DOAH
  1. Proposed Position
  2. Master List of TFB Legislative Positions

### Discussion:

Judge Kent Wetherell reported on the need to roll over legislative positions. Positions 1 through 5 have been adopted in the past by the Executive Council of the Administrative Law Section. Additionally, Judge Wetherell reported that current position number 6 had been reworded to broaden it to cover public records requests. The existing language read:

6. Oppose amendment to Chapter 120 Florida Statutes, that limits, restricts, or penalizes full participation in the administrative pro-

cess in the absence of compelling justification or non-anecdotal evidence which demonstrates that the existing provisions of law are not adequately protecting the administrative due process rights of all participants.

The recommended changes under discussion would have the position read:

6. Opposes amendments to Chapter 120, Florida Statutes, or other legislation, that limit, restrict, or penalize full participation in the administrative process without compelling justification.

Clark Jennings moved the legislative positions for adoption. Judge Linda Rigot amended the motion to include positions 1 through 5 and approve revised position number 6 as well as to add a position number 7 regarding support of adequate funding for the Division of Administrative Hearings which would read:

- Supports adequate funding of the Division of Administrative Hearings and other existing state administrative dispute resolution forums in order to ensure the efficient resolution of administrative disputes.

Elizabeth McArthur seconded the motion and the motion carried unanimously.

Larry Sellers then asked whether position number 6 would apply without regard to whether anyone's substantial interests were at issue.

In other words, Mr. Sellers asked whether the Administrative Law Section would oppose legislation if a person was not receiving due process even in a situation when that person had no substantial interest at stake in the litigation.

Judge Rigot reported that the extra language in the earlier position number 6 was removed in order to make this position more general.

Larry Sellers reported that the addition of the language "or other legislation" and the removal of "due process rights" broadens the position to types of legislation that the position would now oppose. Elizabeth McArthur disagreed and indicated that it was not a position regarding standing.

Judge Rigot indicated that the changed language strengthens requirement from non-anecdotal to compelling justification.

Clark Jennings then moved to reconsider all legislative positions. Wellington Meffert seconded the motion. The motion carried with no opposition.

Clark Jennings then moved to adopt Positions 1 through 5 and 7, which was seconded and duly passed.

Position number 6 then was brought back for discussion. Elizabeth McArthur indicated that the revised language would authorize the Administrative Law Section to oppose non-Chapter 120 changes without having to return to the Florida Bar for approval, though approval on any particular opposition would always

be brought back the Administrative Law Section.

Judge Kent Wetherell, Donna Blanton, Elizabeth McArthur and Larry Sellers discussed when representatives of the Administrative Law Section must return to the Section's Executive Council to obtain guidance on particular legislation. Larry Sellers again questioned whether the term "due process of all participants" caused confusion about whether it applied to those parties that lack standing.

Judge Rigot moved to adopt position number 6. Donna Blanton seconded the motion. The motion carried with no opposition.<sup>1</sup>

### III. Task Force on Attorney-Client Privilege

- A. Invitation to Comment
- B. Draft Statement of the Government Lawyers Section
- C. Draft ALS Response to TFB

Members of the Council drafted a proposed response to preliminary proposal related to the Attorney-Client Privilege/Work Product Protections in the public sector prepared by the Task Force on Attorney-Client

Privilege. The position opposed several of the proposed statutory changes: (1) as lacking public necessity justifying the proposed exemption, as required by the Florida Constitution; and (2) as being punitive to the citizens of our State. The Administrative Law Section's proposed response was brought forth for discussion.

Judge Rigot reported that the Government Law Section strongly supports changes to existing laws concerning attorney-client privilege enjoyed by lawyers representing governmental agencies. However, the example cited within the report supporting such legislative changes generally referred to civil cases or unique examples. A better approach might focus on things involved in the administrative process.

Judge Li Nelson moved to adopt the position. Ms. McArthur seconded.

Clark Jennings suggested that we should be more specific and less general in our letter commenting on the Government Law Section's position. Elizabeth McArthur indicated that the Administrative Law Section does maintain a broad opposition to exceptions.

Shaw Stiller reported his perspective as a lawyer representing a gov-

ernment agency. He indicated that 98% of all Chapter 119, public records requests occur before a petition is filed and litigation begins, thus making the newly proposed law moot. However, Mr. Stiller noted, discovery cutoffs become meaningless if Chapter 119 requests may continue to be made. Mr. Stiller favored a position that was more practical, and he was uncomfortable with the Task Force proposal. Judge Wetherell indicated that public records obtained after the cutoff and discovery normally would not be admissible or serve as the basis for a continuance.

The question was called and the motion to adopt language in the Administrative Law Section response to Ms. Bateman was adopted with one vote in opposition.

F. Scott Boyd abstained from discussion of the merits and any vote.

Whereupon the meeting was adjourned.

Respectfully submitted,  
Seann Frazier

#### Endnote:

1 See page 16 of this newsletter for the text of each position.

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## PRO BONO OPPORTUNITIES

*from page 1*

a greater need for legal representation.

The Administrative Law Section plans to help in two ways. The first is through education. There are a number of attorneys, such as legal aid attorneys, who know how to litigate and are familiar with APD issues, but may be unfamiliar with the administrative hearing process. In contrast, there are many administrative lawyers who know the Chapter 120 process, but do not know the substantive law of APD eligibility and level of service determinations. The Section will work with APD, Legal Aid of Florida, and other organizations to provide both groups of practitioners with education and training on the administrative hearing process and the substantive law of APD determi-

nations. While the Pro Bono Committee is still exploring the best way to provide the training, one possibility is to conduct a live CLE or other program in Tallahassee and tape it for distribution to attorneys downstate. This option reflects the fact that while many members of the Administrative Law Section are located in Tallahassee, most legal aid attorneys and others who might represent APD clients are spread around the state.

Second, the Section will recruit administrative law practitioners (this means YOU!) to represent APD clients pro bono. Florida Legal Services has graciously agreed to serve as the coordinator for Administrative Law Section members and other attorneys who want to volunteer to represent APD clients. Our job will be to edu-

cate Section members about the opportunity to serve.

The APD project is a new direction for the Administrative Law Section, and we welcome your input. If you have ideas or want to help with developing this new program, please contact any member of the Pro Bono Committee: Julie Waldman ([julie\\_waldman@dcf.state.fl.us](mailto:julie_waldman@dcf.state.fl.us)), Clark Jennings ([jenninc@doacs.state.fl.us](mailto:jenninc@doacs.state.fl.us)), Allen Grossman ([a.grossman@mgf-blaw.com](mailto:a.grossman@mgf-blaw.com)), or myself ([andy.bertron@sutherland.com](mailto:andy.bertron@sutherland.com)). We look forward to your participation.

*Andy Bertron is the immediate past chair of the Administrative Law Section. He practices law with Sutherland Asbill & Brennan LLP in the firm's Tallahassee office.*



The Florida Bar Continuing Legal Education Committee and the Administrative Law Section present the

# 2008 Pat Dore Administrative Law Conference

COURSE CLASSIFICATION: INTERMEDIATE LEVEL



One Location: October 2-3, 2008  
University Center Club, FSU Doak Campbell Stadium  
Tallahassee, FL 32306, Phone: 850-644-8528

Course No. 0750R

## Lecture Program

### Thursday, October 2

1:00 p.m. – 1:30 p.m.  
**Late Registration**

1:30 p.m. – 1:40 p.m.  
**Welcome**

*Elizabeth W. McArthur, Radey  
Thomas Yon & Clark P.A.,  
Chair, Administrative Law Section*

1:40 p.m. – 2:30 p.m.  
**Unadopted Rules under the New  
Amendments to the APA**  
*Lawrence E. Sellers, Jr., Holland &  
Knight*

2:30 p.m. – 3:20 p.m.  
**Administrative Law Case Update**  
*Mary F. Smallwood, Ruden  
McCloskey Smith Schuster &  
Russell P.A.*

3:20 p.m. – 3:35 p.m.  
**Break**

3:35 p.m. – 4:25 p.m.  
**Standards for Agency Action  
on Recommended Orders and  
Appellate Review**  
*Paul H. Amundsen, Amundsen &  
Smith*

4:25 p.m. – 5:00 p.m.  
**Role of the Joint Administrative  
Procedures Committee**  
*Moderator: Jesslyn A. Krouskroup,  
JAPC  
Brian T. Moore, JAPC  
Jowanna Oates, JAPC  
Suzanne G. Printy, JAPC  
Susan K. Stafford, JAPC*

5:00 p.m. – 6:00 p.m.  
**Reception (All attendees invited)**  
*Sponsored by Metzger, Grossman,  
Furlow, & Bayó, L.L.C.*

### Friday, October 3

8:30 a.m. – 9:20 p.m.  
**Emergency Orders and Emergency  
Rules**  
*Grant P. Dearborn and Thomas J.  
Walsh, II, Agency for Health Care  
Administration*

9:20 a.m. – 10:00 a.m.  
**Incorporation by Reference under  
the New Amendments to the APA**  
*F. Scott Boyd, Joint Administrative  
Procedures Committee*

10:00 a.m. – 10:15 a.m.  
**Break**

10:15 a.m. – 11:10 a.m.  
**Privatization and the Definition of  
Agency**  
*Moderator: Donna E. Blanton, Radey  
Thomas Yon & Clark P.A.  
Daniel E. Nordby, Ausley & McMullen,  
P.A.  
Frederick J. Springer, Bryant, Miller  
& Olive*

11:10 a.m. – 12:00 noon

**Overview of DOAH’s Jurisdiction**

*Hon. Robert S. Cohen, Chief Judge,  
Division of Administrative Hearings*

12:00 noon – 1:30 p.m.

**Lunch and Keynote Address  
(included in registration fee)**

**Agencies, the Legislature, and  
the Courts in the Administrative  
Process**

*Hon. Philip J. Padovano, First District  
Court of Appeal*

1:30 p.m. – 2:20 p.m.

**Florida’s New Election Law & Rules**  
*Ion Sancho, Leon County Supervisor  
of Elections*

2:20 p.m. – 2:30 p.m.

**Break**

2:30 p.m. – 3:20 p.m.

**Ethical Considerations**

*Elizabeth C. Tarbert, The Florida Bar*

3:20 p.m. – 4:00 p.m.

**APD Medicaid Hearings**

*Moderator: Hon. Lisa S. Nelson,  
Division of Administrative Hearings  
John D.C. Newton, II, Agency for  
Persons with Disabilities  
Cynthia A. Mikos, Cynthia A. Mikos,  
P.A.*

**CLE CREDIT**

**CLER PROGRAM**

(Maximum Credit: 11.0 hours)

General: 11.0 hours  
Ethics: 1.0 hour

**CERTIFICATION PROGRAM**

(Maximum Credit: 11.0 hours)

Appellate Practice: 8.5 hours  
Business Litigation: 8.5 hours

City, County & Local Government: 11.0  
hours

State & Federal Gov’t & Administrative  
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Seminar credit may be applied to satisfy CLER / Certification requirements in the amounts specified above, not to exceed the maximum credit. See the CLE link at [www.floridabar.org](http://www.floridabar.org) for more information.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News or available in your CLE record on-line) you will be sent a Reporting Affidavit if you have not completed your required hours (must be returned by your CLER reporting date).

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**Register me for the “2008 Pat Dore Administrative Law Conference”**

**ONE LOCATION: (003) UNIVERSITY CENTER CLUB, TALLAHASSEE (OCTOBER 2-3, 2008)**

TO REGISTER OR ORDER AUDIO CD OR COURSE BOOKS, BY MAIL, SEND THIS FORM TO: The Florida Bar, CLE Programs, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON-SITE REGISTRATION, ADD \$25.00. **On-site registration is by check only.**

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**JMW: Course No. 0750R**

**REGISTRATION FEE (CHECK ONE):**

- Member of the Administrative Law Section: \$150
- Member of the Administrative Law Section - Government Agency: \$100  
*Includes full-time attorneys employed by a government agency. Include employment verification with registration.*
- Non-section member: \$175
- Full-time law college faculty or full-time law student: \$112.50
- Persons attending under the policy of fee waivers: \$50  
*Includes Supreme Court, DCA, Circuit and County Judges, Magistrates, Judges of Compensation Claims, Administrative Law Judges, and full-time legal aid attorneys if directly related to their client practice. (We reserve the right to verify employment.)*

**METHOD OF PAYMENT (CHECK ONE):**

- Check enclosed made payable to The Florida Bar
- Credit Card (Advance registration only. Fax to 850/561-5816.)  
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Check here if you have a disability that may require special attention or services. Please attach a general description of your needs. We will contact you for further coordination.

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Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 10/03/08. TO ORDER AUDIO CD OR COURSE BOOKS**, fill out the order form above, including a street address for delivery. **Please add sales tax to the price of tapes or books. Tax exempt entities must pay the non-section member price.**

*Please include sales tax unless ordering party is tax-exempt or a nonresident of Florida. If this order is to be purchased by a tax-exempt organization, the course book/tapes must be mailed to that organization and not to a person. Include tax-exempt number beside organization’s name on the order form.*

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# 2008-2010 Legislative Biennium

## Administrative Law Section

### July 25, 2008

1. Opposes any amendment to Chapter 120, Florida Statutes, or other legislation, that undermines the rule-making requirements of the Administrative Procedure Act by allowing statements of agency policy without formal rule-making.

2. Opposes any amendment to Chapter 120, Florida Statutes, or other legislation to deny, limit or restrict points of entry to administrative proceedings under Chapter 120, Florida Statutes, by substantially affected persons.

3. Opposes exemptions or exceptions to the Administrative Procedure Act, but otherwise supports a requirement that any exemption or exception be included within Chapter 120, Florida Statutes.

4. Supports voluntary use of mediation to resolve matters in administrative proceedings under Chapter 120, Florida Statutes, and supports confidentiality

of discussions in mediation; but opposes mandatory mediation and opposes imposition of involuntary penalties associated with mediation.

5. Supports uniformity of procedures in administrative proceedings under Chapter 120, Florida Statutes, and supports modification of such procedures only through amendment of or exceptions to the Uniform Rules of Procedure.

6. Opposes amendments to Chapter 120, Florida Statutes, or other legislation that limit, restrict, or penalize full participation in the administrative process without compelling justification.

7. Supports adequate funding of the Division of Administrative Hearings and other existing state administrative dispute resolution forums in order to ensure efficient resolution of administrative disputes.



**The Florida Bar**  
**651 E. Jefferson St.**  
**Tallahassee, FL 32399-2300**

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