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CHAIR-ELECT:

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TREASURER:

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Administrative Law Section

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Administrative Law Section Fall Executive Council Meeting

Friday, November 1, 2019

11:00a – 2:00p

Pennington P.A.

215 S. Monroe Street, Suite 200

Tallahassee, FL 32301

Dial In Information (888) 376 -5050 Conference Code: 3789654123

Leader Pin: 80457

EXECUTIVE COUNCIL:**Terms Expiring 2020:**

Francine M. Folkes, Tallahassee
 Gigi Rollini, Tallahassee
 Colin M. Roonarine, Tallahassee
 Suzanne Van Wyk, Tallahassee
 James Z. Ross, Tallahassee
 Paul Drake, Tallahassee
 Tara Price, Tallahassee

Terms Expiring 2021:

Fred Dudley, Tallahassee
 Sharlee Hobbs Edwards, Coral Gables
 Mark Ito, Tallahassee
 Clark R. Jennings, Tallahassee
 Anthony B. Miller, Tallahassee
 Patricia A. Nelson, Tallahassee
 Lyyli M. Van Whittle, Tallahassee

SECTION ADMINISTRATOR:

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AGENDA

I. CALL TO ORDER- Brian Newman, Chair

II. PRELIMINARY MATTERS

A. Consideration of Minutes

1. June 2018 (Executive council meeting)

B. Treasurer's Report- Tabitha Jackson

1. Detail Statement of Operations (emailed on 10/30/19)
2. Florida Bar Foundation

C. Chair's Report- Brian Newman

1. DOAH Trial Academy update
2. Update on ALS mixer events
3. ALS Christmas party?
4. Government Bar Association

III. Committee / Liaison Reports

A. Nominating Committee Report – Jowanna Oates

B. Continuing Legal Education- Bruce D. Lamb

1. 2020 Pat Dore Conference (February 2020) Tallahassee, FL
2. 2019 Webinar Series

C. Publications

1. Newsletter- Jowanna N. Oates / Tiffany Roddenberry
2. TFB *Journal*- Stephen C. Emmanuel
3. Florida Administrative Practice-

D. Legislative - Fred R. Dudley/Daniel E. Nordby

E. Public Utilities Law- Michael G. Cooke/Cynthia B. Miller

THE FLORIDA BAR

F. TFB Board of Governors Liaisons – Lawrence E. Sellers, Jr.

G. Law School Liaison –Sharlee Edwards

H. TFB Council of Sections – Clark R. Jennings

I. Section / Division Liaison

1. Environmental and Land Use Law- Francine M. Folkes
2. Health Law – Bruce D. Lamb
3. Government Lawyer – Lynne Quimby - Pennock
4. YLD Liaison- Tabitha Jackson
5. RPPTL – Frederick R. Dudley
6. Labor & Employment – Robert Kilbride
7. Animal Law – Gregg Morton
8. TFB Diversity and Inclusion – Lyyli Van Whittle
9. Appellate Court Rules – Gigi Rollini

J. DOAH Update- F. Scott Boyd/ Lynne A.Quimby-Pennock/ Suzanne Van Wyk

L. South Florida Chapter update – Sharlee Edwards

IV. OLD BUSINESS

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V. NEW BUSINESS

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VI. INFORMATIONAL

A. Section Bylaws (**Exhibit E**)

VII. TIME AND PLACE OF NEXT MEETING

- A. Long Range Planning Retreat – April 2020 TBA
- B. Annual Convention & Election of New Officers – June 2020 Orlando, FL

VIII. ADJOURNMENT

Chair's Report

1. **DOAH Trial Academy.** The first DOAH Trial Academy was held September 9-15, 2019. 20 students participated in the program and all earned 42 hours of CLE credit, all of which applies toward Board Certification qualification. Awards were given as follows: Best Opening Statement – Virginia Edwards, Department of Health; Best Direct Examination – Amanda McKibben, Department of Agriculture; Best Cross Examination – Johnny ElHachem, Division of Pari-Mutuel Wagering. The transcript of the mock hearing has been circulated and PROs are due November 4th. An award will be given for the best PRO submitted. After the PRO award is announced, a meeting will be held with the students to get feedback for improving the program next year. Richard Shoop designed a mentor program and many of the Trial Academy Students are participating in the program as a pilot project.

2. **Update on ALS mixer events.** The Young Lawyers Committee has been working hard. In particular, Tabitha Jackson Brittany Dambly, Paul Drake, James Ross, Ross Vickers and Kelly Kibbey have been doing a great job for the ALS.

-A Back to School Drive was held August 8th at Happy Motoring Benefiting Boys Town. Over 40 backpacks filled with assorted school supplies were collected at the event.

-There was a Guardian Ad Litem event held October 4t at El Jalisco. ALS collected \$525 in cash and \$280 in gift cards to benefit GAL.

-There will be a Thanksgiving food-drive event November 12th at Harry's to benefit Pineview Elementary students and families.

-Events in progress for the Spring with the FSU College of Law Student Bar Association include a possible lunch with an ALS panel/speakers, a table-for-8 style event in the law school rotunda with a guest speaker, and participation in the SBA golf tournament with requested sponsorship.

Calbrail has worked with the Young Lawyers committee to update and improve the email list and fliers for events are now being distributed to all ALS members.

3. **ALS Christmas party.** Calbrail is going to assist with a poll to gauge interest in an ALS covered-dish style Christmas Party. More details to follow.

4. **Florida Government Bar Association.** The Florida Government Bar Association is a voluntary bar organization that hosts monthly networking CLE luncheons for members and other CLE events and fundraisers for local charities. The President of FGBA, Amanda McKibben, is an ALS member as are its Treasurer, Kelly Kibbey, its Young Lawyers Chair, Annie Prescott and its Social Chair, Megan Silver. FGBA and the ALS jointly sponsored a CLE program on Administrative Practice for Young Lawyers on October 4th at the First DCA that was very well attended. The FGBA and ALS provided a total of 560 hours of free CLE credit to over 80 attorneys from 19 different state agencies and 9 private firms at this one program. Speakers included ALS past chair Jowanna Oates, ALS member Paul Drake, ALJ Jessica Varn, Chief Judge MacIver, and ALS member Amy Schrader. FGBA is sponsoring another CLE on November 8th on Advanced

Topics in Administrative Practice that will be held at DOAH. Speakers include ALJ's John Van Laningham, Hetal Desai, Robert Telfer and Andrew Manko. A Happy Hour will be held at the Brass Tap following the event.

**The Florida Bar Administrative Law Section's
Recommended Changes to the Uniform Rules of Procedure
(October 30, 2019 DRAFT)**

THE FULL TEXT OF THE PROPOSED RULE IS:

28-101.001 Statement of Agency Organization and Operation.

(1) No change.

(2) The Statement of Agency Organization and Operation shall be reviewed and updated annually. The Statement shall:

(a) through (d) No change.

(e) ~~State whether~~Describe the manner by which documents can be filed by e-mail or facsimile transmission, including applicable telephone numbers and e-mail addresses where filings may be submitted, and set forth the acceptable nature and scope of such filings, including the following:

That the filing date for a document transmitted by e-mail or by facsimile shall be the date the agency receives the complete document. Any document received by the office of the agency clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

(f) No change.

(g) Set forth the agency's hours of operation including the hours during which filings will be accepted.

(h) List the legal holidays and other days on which on which the agency will be closed.

(i) Describe how the public will be informed of unscheduled agency closures.

(h*j*) No change.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 12-24-07, 2-5-13, 6-26-13, _____.

Comment: *Requires agencies to describe how to ~~e~~-file documents by e-mail as part of their Statement of Agency Organization and Operation. Requires the Statement to list the days on which the agency will be closed and how the public will be informed of unexpected closures. To implement the statutory mandate that the Statement be maintained as current, this proposal requires the Statement to be reviewed and updated annually. The Administration Commission is encouraged to require all agencies to adopt some form of filing by e-mail.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-105.0027 Intervention.

(1) Persons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. ~~The presiding officer shall allow for intervention of persons meeting the requirements for intervention of this rule.~~ Except for good cause shown, motions for leave to intervene must be filed within 21 days after publication of (or such later time as is specified in) the notice in the Florida Administrative Register. ~~The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.~~

(2) and (3) No change.

(4) The presiding officer shall allow persons meeting the requirements of this rule to intervene. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(5) An intervenor may, within 7 days of (or such later time as is specified in) the order granting intervention, file a response to the petition for declaratory statement. No reply or other paper directed to a timely response may be filed absent leave granted by order of the presiding officer.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 1-15-07, Amended 2-5-13, _____.

Comment: *The change proposed in new subsection (4) would relocate two sentences from existing subsection (1) for improved organization and clarity. New subsection (5) would provide basic guidelines for an intervenor’s written submission and responses thereto from others.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-105.003 Agency Disposition.

The agency may hold a hearing to consider a petition for declaratory statement. ~~If the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting.~~ The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within 90 days of the filing of the petition, the agency shall render a final order denying the petition or issuing a declaratory statement.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 4-1-97, Amended 1-15-07, _____.

Comment: *Removes language stating that, if an agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting. The existing language is proposed for deletion as unnecessarily repetitive of the Sunshine Law.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.103 Computation of Time.

In computing any period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, ~~or~~ legal holiday, or any other day on which the agency clerk’s office is closed, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, ~~or~~ legal holiday, or any other day on which the agency clerk’s office is closed. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, ~~and~~ legal holidays, and any other days on which the agency clerk’s office is closed shall be excluded in the computation. As used in these rules, legal holiday means those days designated in Section 110.117, F.S. Except as provided in Rule 28-106.217, F.A.C., five days shall be added to the time limits when service has been made by regular U.S. mail. One business day shall be added when service is made by overnight courier. No additional time shall be added if service is made by hand, facsimile transmission, or e-mail or when the period of time begins pursuant to a type of notice described in Rule 28-106.111, F.A.C.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07, _____.

Comment: *This change is to clarify that days on which the agency clerk’s office is closed (e.g., emergency closures or discretionary closures by executive order) are treated like weekends and legal holidays in the computation of time.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.104 Filing.

(1) No change.

(2) All pleadings filed with the agency shall contain the following:

(a) through (c) No change.

(d) The name, address, any e-mail address, Florida Bar number, if applicable, and telephone number of the person filing the pleading;

(e) through (f) No change.

(3) Any document received by the office of the agency clerk before 5:00 p.m. shall be filed as of that day but any document received after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

(4) ~~Whenever a party files a pleading or other document with the agency, that party shall serve copies of the pleading or other document upon all other parties to the proceeding. Each pleading or document filed with the agency subsequent to the initial pleading shall be served on the other parties to the proceeding in the manner set forth in rule 28-106.110(5). A certificate of service shall accompany each pleading or other document filed with the agency.~~

(5) All parties, if they are not represented, or their attorneys or qualified representatives shall promptly notify all other parties and the presiding officer of any changes to their contact information by filing a notice of the change.

(6) All papers filed shall be titled to indicate clearly the subject matter of the paper and the party requesting relief.

(7) All original pleadings shall be on white paper measuring 8 1/2 by 11 inches, with margins of no less than one inch. Originals shall be printed or typewritten.

(8) A document shall be filed by only one method (~~e-filing~~service by electronic mail, facsimile, courier, hand-delivery, or U.S. mail) and shall not be filed multiple times. A duplicate filing will not be docketed and will be destroyed.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07, 2-5-13, _____.

Comment: *First sentence moved to Rule 28-106.110. Second sentence shifted to the active voice.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.105 Appearances.

(1) ~~Counsel or qualified representatives who files a request for a proceeding hearing involving disputed issues of material fact with the agency have~~has entered an appearance in the proceeding and shall be deemed counsel ~~or qualified representative~~ of record. All others who seek to appear shall file a notice of appearance as soon as possible.

(2) A qualified representative who has filed a request for a proceeding shall be deemed the qualified representative of record until the presiding officer makes the

determination required by Rule 28-106.106, F.A.C. The party on whose behalf the qualified representative filed the initial pleading shall make the required filings under Rule 28-106.106, F.A.C within seven days of assignment of a presiding officer.

~~(2)~~(3) Service on counsel of record or on a qualified representative shall be the equivalent of service on the party represented.

(3)(4) On written motion served on the party represented and all other parties of record, the presiding officer shall grant counsel of record and qualified representatives leave to withdraw for good cause shown. The motion shall contain the address, any e-mail address, and telephone number of the party represented.

~~(4) A qualified representative who has filed an initial pleading or notice of appearance for a party shall be deemed the qualified representative of record until the presiding officer makes the determination required by Rule 28-106.106, F.A.C.~~

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 2-5-13, _____.

Comment: *Requires a person seeking representation by a qualified representative to make the required filings within 7 days of filing a request for hearing if the representative makes the initial filing.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.106 Who May Appear; Criteria for Qualified Representatives.

(1) Any party who appears in any agency proceeding has the right, at his or her own expense, to be represented by counsel or by a qualified representative. Counsel means a member of The Florida Bar in good standing or a law student certified pursuant to Chapter 11 of the Rules Regulating The Florida Bar. ~~An attorney disbarred in any state shall not be authorized to serve as a qualified representative.~~ Qualified representative means a person who meets the qualifications of this section and has been authorized by order of the presiding officer to represent a party in a proceeding. An attorney licensed solely in jurisdiction(s) other than Florida must file a written request to appear as a qualified representative.

~~(2)(a) When a request for a proceeding has been filed on behalf of a party by a qualified representative, that~~A party seeking representation by a qualified representative shall file a written request under this rule withnot later than seven days after assignment of the presiding officer. Otherwise, a party seeking representation by a qualified representative after assignment of the presiding officer shall file a written request as soon as practicable, but no later than any pleading filed by the person seeking to appear on behalf of the party. The request shall identify the name, address, e-mail address, and telephone number of the representative and shall state that the party is aware of the services which the representative can provide, and is aware that the party can be represented by counsel at the party's own expense and has chosen otherwise include the following:

(a) The name, address, e-mail address, and telephone number of the representative;

(b) The presiding officer shall consider whether the representative is qualified to appear in the administrative proceeding and capable of representing the rights and interests of the party. The presiding officer may consider a representative's sworn affidavit setting forth the representative's qualifications.

(c) The presiding officer shall determine the qualifications of the representative within a reasonable time after the request required by paragraph (a) is filed.

(b) A statement that the party is aware of the services which the representative can provide, aware that the party can represent themselves or be represented by counsel at their own expense, and has chosen otherwise.

(c) A sworn affidavit from the representative setting forth her or his qualifications, listing all proceedings in the past 2 years in which they have been granted or denied authorization as a representative, and stating whether the proposed representative has been denied admission to the Florida Bar or the bar of any jurisdiction. The affidavit shall also state that the representative had read and shall comply with the Uniform Rules of Procedure, Chapter 120, Florida Statutes, and all other applicable statutes and rules.

(d) If the representative is a lawyer, the sworn affidavit shall also include a list of the jurisdictions in which the lawyer is currently admitted to practice and a certification that the lawyer does not meet any of the disqualifying criteria in paragraph (4).

(3) The presiding officer shall authorize the representative to appear if the presiding officer is satisfied that the representative has the necessary qualifications to responsibly and capably represent the party's rights and interests in a manner which will not impair the fairness of the proceeding or the correctness of the action to be taken.

~~(4) The presiding officer shall make a determination of the qualifications of the representative in light of the nature of the proceedings and the applicable law. The presiding officer shall consider:~~

~~(a) The nature of the proceedings and the applicable law representative's knowledge of jurisdiction;~~

~~(b) The representative's sworn affidavit;~~

~~(c) The representative's knowledge of the Florida Rules of Civil Procedure relating to discovery in an administrative proceeding;~~

~~(d) The representative's knowledge regarding the rules of evidence, including the concept of hearsay in an administrative proceeding;~~

~~(e) The representative's knowledge of Chapter 120, F.S., and the uniform rules adopted pursuant to section 120.54(5), F.S.;~~

~~(f) The representative's knowledge regarding the factual and legal issues involved in the proceedings; and~~

~~(g) The representative's knowledge of and compliance with the Standards of Conduct for Qualified Representatives, Rule 28-106.107, F.A.C.~~

(4) No person currently or formerly admitted to practice law may be authorized as a qualified representative under this rule if that person is disbarred, resigned in lieu of discipline, is inactive due to incapacity, or is suspended as a disciplinary sanction from practice in any jurisdiction.

(5) Within a reasonable time after the request under paragraph (2) is filed, if the presiding officer shall determines whether a representative is or is not qualified. If the presiding officer determines that the proposed representative is not qualified, the reason(s) for the decision shall be in writing and included in the record.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5), 120.57(1)(b) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13, _____.

Comment: *Requires a person seeking representation by a qualified representative to make the required filings as soon as practicable if the representative did not file the initial pleading. Clarifies that attorneys appearing in administrative proceedings must be members of The Florida Bar in good standing. Clarifies that attorneys licensed in other*

jurisdictions must file a written request to appear as a qualified representative. Requires a qualified representative to disclose (a) prior proceedings in which they have been granted or denied permission to appear as a representative and (b) whether they have been denied admission to the bar of any jurisdiction. Requires a lawyer seeking to appear as a qualified representative to disclose all jurisdictions where they are licensed to practice. Prohibits a person who is admitted to practice in any jurisdiction from being a qualified representative if that person has been disbarred or is currently suspended in any jurisdiction or is a member of the Florida Bar but ineligible to practice.

Provides a definition of qualified representative. Clarifies that attorneys appearing in administrative proceedings must be members of The Florida Bar in good standing and that attorneys licensed in other jurisdictions must file a written request to appear as a qualified representative. Requires a party seeking to be represented by a qualified representative to file the written request for that representation within 7 days of assignment of a presiding officer if the representative filed the request for a proceeding on behalf of the party. Requires an affidavit from a proposed qualified representative that discloses (a) prior proceedings in which they have been granted or denied permission to appear as a representative and (b) whether they have been denied admission to the bar of any jurisdiction. Requires a lawyer seeking to appear as a qualified representative to disclose all jurisdictions where they are licensed to practice and certify that they are not subject to any disqualifying criteria. Requires the affidavit to state that the representative has read and will comply with Chapter 120 and the Uniform Rules. Prohibits a person who is admitted to practice in any jurisdiction from being a qualified representative if that person has been disbarred, resigned in lieu of discipline, is inactive due to incapacity, or is suspended as a disciplinary sanction from practice.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.107 Standards of Conduct for Qualified Representatives.

All qualified representatives shall comply with the following standards of conduct:~~are mandatory for all qualified representatives.~~

(1) A representative shall comply with the Uniform Rules of Procedure, Chapter 120, Florida Statutes, and all other applicable statutes and rules.

~~(12)~~ A representative shall exercise due diligence to ensure ~~insure~~ that any motion or pleading is filed and argued in good faith.

~~(23)~~ A representative shall advise the client to obey the law.

~~(34)~~ A representative shall not:

(a) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(b) Engage in conduct that is prejudicial to the administration of justice;

(c) Handle a matter which the representative knows or should know that he or she is not competent to handle;

(d) Handle a legal or factual matter without adequate preparation;

(e) Communicate, or cause another to communicate, as to the merits of the proceeding with the presiding officer except on the record or in writing with a copy promptly delivered to the opposing party; or

(f) Communicate with an adverse party regarding matters at issue in the administrative proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative.

(45) Failure to comply with these provisions shall authorize the presiding officer to disqualify the representative appearing in the administrative proceeding.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended _____.

Comment: *The change will make clear the obligation of a qualified representative to comply with governing rules and statutes and ensure that a proposed qualified representative knows about the obligation before entering into the representation.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.110 Service of Papers.

~~Unless the presiding officer otherwise orders, every pleading and every other paper filed in a proceeding, except applications for witness subpoenas, shall be served on each party or the party's representative at the last address of record.~~

(1) Unless other provided by law, service shall be as provided by this rule.

(2) Whenever a party files a pleading or other document, that party shall serve copies of the pleading or other document upon all other parties to the proceeding.

(3) Service upon an unrepresented party shall be made by service upon that party at their address of record. Service upon a represented party shall be made by service upon that party's attorney or qualified representative at the attorney or representative's address of record.

(4) If the address of record includes an e-mail address, service shall be made by e-mail.

(5) A pleading or document served by e-mail after 5:00 p.m. shall be deemed served as of 8:00 a.m. the following day.

(6) When any party, representative, or attorney certifies in substance:

"I certify that the foregoing document has been furnished to (here insert name or names, addresses used for service, and mailing addresses) by (e-mail) (delivery) (mail) (fax) on (date) [Name, Title, Signature]"

the certificate is taken as prima facie proof of such service in compliance with this rule.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, _____.

Comment: *Consolidates existing provisions regarding service from several rules into one. Adds requirement for service by e-mail when address of record includes an e-mail address, a form for certificate of service, and a provision that service by e-mail after 5:00 p.m. shall be deemed service as of 8:00 a.m. the following day. Designed to make clear that this does not displace service requirements in specific statutes, such as in sections 120.60(5) or 766.303, Fla. Stat.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.111 Point of Entry into Proceedings and Mediation.

(1) The notice of agency decision shall contain the information required by Section 120.569(1), F.S. The notice shall include the address for delivery by mail or courier, e-mail address, and telephone number for the agency clerk and, if applicable, instructions on how to file documents with the agency clerk by e-mail, or, if applicable, instructions on how to electronically file documents with the agency clerk or, if applicable, instructions on how to file documents with the agency clerk by facsimile transmission, including the telephone number for facsimile transmission. The notice shall also advise whether mediation under Section 120.573, F.S., is available, and if available, that pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

(2) No change.

(3) ~~An agency may, for good cause shown, grant a~~ The notice of rights shall advise that a person may request for an extension of time for to filing an initial pleading, and that the request shall state good cause for the extension. Requests for extension of time must be filed with the agency prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and that the agency and any other parties agree to or oppose the extension. An agency may grant the request for extension for good cause shown. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

(4) Any person who receives written notice of an agency decision and who fails to file a timely written request for a hearing ~~within 21 days~~ waives the right to request a hearing on such matters. This provision does not eliminate the availability of equitable tolling as a defense.

(5) No change.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 3-18-98, 1-15-07, _____.

Comment: *Requires the notice of administrative rights to include directions on how to e-file by e-mail. Requires the notice of administrative rights to advise of the right to request an extension of time to file a request for hearing.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.201 Initiation of Proceedings.

(1) through (3) No change.

(4) Other than parties to the original proceeding, specifically-named persons who are the subject of the agency’s proposed action may become a party to the proceeding by entering an appearance as a respondent and identifying how their substantial interests are being determined. Such named party respondent shall be entitled to raise issues in support of the agency’s determination or defenses to the allegations in the petition.

Rulemaking Authority 14.202, 120.54(3), (5) FS. Law Implemented 120.54(3) FS. History—New 4-1-97, Amended 9-17-98, 1-15-07, 2-5-13, _____.

Comment: *Adds new subsection (4) to provide that specifically-named persons who are the subject of the agency’s proposed action may become a party to the proceeding by entering an appearance as a respondent and describing how their substantial interests are being determined. (Similar to former Rule 28-106.205(3) and referenced in amended Rule*

28-106.205(4).) *Examples of such specifically-named persons include the applicant or bidder named in the -agency's notice of decision or intended decision that is the subject of a petition for hearing. Provides that such party is a respondent and may raise issues in support of the agency's determination or defenses to the allegations in the petition.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.204 Motions.

(1) through (2) No change.

(3) All motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record_ and shall state as to each party whether the party has any objection to the motion and whether any party intends to file a response to the motion. Any statement that the movant was unable to contact the other party or parties before filing the motion must provide information regarding the date(s) and method(s) by which contact was attempted.

(4) No change.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13, _____.

Comment: *The proposed change would require parties to indicate in a motion whether any party intends to file a response so that the presiding officer will know whether to wait for the time allowed for a response to elapse before ruling on the motion.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.205 Intervention; Appearances by Specifically-Named Persons

(1) Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene. Except for good cause shown, motions for leave to intervene must be filed at least 20 days before the final hearing unless otherwise provided by law. The parties may, within 7 days of service of the motion, file a response in opposition. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(2) The motion to intervene shall contain the following information:

(a) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor, if the intervenor is not represented by an attorney or qualified representative; and

(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative; and

(c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding; and

(d) A statement as to whether the intervenor supports or opposes the preliminary agency action; and

(e) If the intervenor seeks to raise new issues, the information required by Rule 28-106.201(2)(c)-(g); and

(ef) The statement required by subsection 28-106.204(3); and

(fg) The signature of the intervenor or intervenor's attorney or qualified representative; and

(gh) The date.

(3) The intervention shall be in subordination to, and in recognition of, the main proceeding, unless otherwise ordered by the presiding officer in their discretion.

(3)(4) Specifically-named persons, whose substantial interests are being determined in the proceeding, may become a party by entering an appearance as a named party in the manner described in Rule 28-106.201(4) and need not request leave to intervene.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13, _____.

Comment: *Requires an intervenor who seeks to raise new issues to also include the information required by Rule 28-106.201(2)(c)-(g) (prescribing contents of petition). Consistent with case law, provides that intervention is in subordination to, and in recognition of, the main proceeding, unless otherwise ordered by the presiding officer. Revises Subsection (3) (now- (4)) to reference the process by which specifically-named persons may become a party— as opposed to an intervenor. See Rule 28-106.201(4)*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.2115 Motions to Disqualify.

(1) Any party may request the disqualification of an administrative law judge by filing with the Division of Administrative Hearings prior to the taking of evidence at a hearing a motion to disqualify, accompanied by an affidavit, stating the grounds with particularity.

(2) The motion must be in writing and allege specifically the facts and reasons upon which the movant relies as grounds for disqualification. The affidavit must allege a well-founded fear that the movant will not receive a fair trial before the administrative law judge because of the prejudice of the administrative law judge against the affiant or in favor of an adverse party, and the reasons for such fear; that the administrative law judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree; or that the administrative law judge is a material witness for or against one of the parties to the cause.

(3) The motion must also include the dates of all previously granted motions to disqualify in the case and the dates of the orders ruling on such motions.

(4) Determination: Initial and Successive Motions.

(a) The administrative law judge against whom an initial motion to disqualify is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the administrative law judge shall immediately enter an order granting disqualification and the case shall be transferred to another administrative law judge. If the motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

(b) If an administrative law judge has been disqualified previously on a motion for alleged prejudice or partiality, a successor administrative law judge shall not be disqualified based on a successive motion by the same party unless the successor administrative law judge rules that he or she is in fact not fair or impartial in the case. A successor judge may rule on the truth of the facts alleged in support of the motion.

(5) Any motion to disqualify shall be ruled on immediately, but in no event more than 15 days after service of the motion. Any motion not ruled upon after 15 days will be deemed granted.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5), 120.569(2)(a) FS. History - New _____.

Comment: *This rule is created to clarify the process to be used and the standards for evaluating a motion to disqualify a presiding officer. The text generally mirrors that of the Rules for Judicial Administration so that case law referencing and applying those Rules can be instructive. The changes to the text are designed solely to adjust the process to comport with the timeframe in section 120.569(2)(a) and are not intended to be substantive.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.213 Evidence.

(1) through (4) No change.

(5) If requested and if the necessary equipment is reasonably available, the presiding officer may enter an order allowing testimony ~~may~~ to be taken by means of video teleconference or by telephone.

(a) No change.

(b) Except in cases of emergency, any party seeking to offer testimony by telephone must file a motion for leave to do so with the presiding officer at least five days prior to the date noticed for the hearing. For any testimony taken by telephone, a notary public must be physically present with the witness to administer the oath. The notary public shall provide a written certification to be filed with the presiding officer confirming the identity of the witness, and confirming the affirmation or oath by the witness. It shall be the responsibility of the party calling the witness to secure the services of a notary public and to file the written certification with the presiding officer.

(6) No change.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07, 2-5-13, _____.

Comment: *Requires a party seeking to offer testimony by telephone to advise the presiding officer at least five days prior to the day noticed for hearing.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.214 Recordation.

(1) through (2) No change.

(3) No later than 7 days prior to any hearing, a party who needs a translator or interpreter in order to testify, present or understand evidence, or otherwise fully participate in the hearing shall give notice to all other parties. This notice shall include the name of the translator or interpreter the party intends to use, the nature of the translation or interpretation services needed, contact information for the translator or interpreter, and a disclosure of the relationship, if any, of the translator or interpreter to the person for whom translation or interpretation services will be provided. This notice shall be served on each party or the party’s representative at the last address of record. If the address of record includes an e-mail address, then service shall be made by e-mail.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 3-18-98, _____.

Comment: *This rule change is to establish a procedure for the use of interpreters and translators.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.217 Exceptions and Responses.

(1) No change.

(2) Exceptions and responses thereto shall be served in accordance with Rule 28-106.110 ~~provided to all parties by facsimile or electronic mail, if a facsimile number or e-mail address has been provided number or address provided,~~ the same day they are filed with the agency.

(3) No change.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13, _____.

Comment: *Amended for consistency with amended Rule 28-106.110. No intended change to existing rule requirements.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.301 Initiation of Proceedings.

(1) Unless otherwise provided by statute and except for agency enforcement and disciplinary actions initiated under subsection 28-106.2015(1), F.A.C., initiation of a proceeding shall be made by written petition to the agency responsible for rendering final agency action. The term “petition” includes any document which requests a proceeding. Each petition shall be legible and on 8 1/2 by 11 inch white paper or on a form provided by the agency. Unless printed, the impression shall be on one side of the paper only and lines shall be doubled-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency’s file or identification number, if known;

(b) The name, address, any email address, and telephone number of the petitioner, if the petitioner is not represented by an attorney or qualified representative; the name, address, email address, facsimile number, and telephone number of the petitioner’s representative; if any, which shall be the address for service purposes during the course of the proceeding;

(c) An explanation of how the petitioner’s substantial interests will be affected by the agency determination;

(d) A statement of when and how the petitioner received notice of the agency decision;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency’s proposed action;

(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency’s proposed action;

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency’s proposed action; and

(h) A statement that no material facts are in dispute.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5), 120.57(1)(i); FS. History—New 4-1-97, Amended 1-15-07, 2-5-13, _____.

Comment: *Allows a party to amend a petition for hearing without leave to comply with the requirements for initiating an informal proceeding following an order determining the absence of material fact and relinquishing jurisdiction.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.3015 Amendment of Petitions.

(1) A petition may be amended prior to the designation of the presiding officer by filing and serving an amended petition in the manner prescribed for filing and serving an original petition. Thereafter the petition may be amended only upon order of the presiding officer.

(2) If an administrative law judge determines that no genuine issue as to any material fact remains in a proceeding brought under Section 120.57(1) and enters an order relinquishing jurisdiction to the agency, the party that initiated the proceeding may amend their petition to comply with subsection (2) of this rule without leave of the presiding officer no later than 14 days after entry of the order relinquishing jurisdiction. The amended petition shall not raise any issues of disputed fact that could have been raised before the administrative law judge.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New _____.

Comment: *The existing uniform rules governing proceedings and hearings not involving disputed issues of fact do not establish procedures for the amendment of petitions. This proposed rule would establish these procedures. The proposed rule is a copy of existing Rule 28-106.202, which governs amendments to petitions in proceedings and hearings involving disputed issues of fact. Allows a party to amend a petition for hearing without leave to comply with the requirements for initiating an informal proceeding following an order determining the absence of material fact and relinquishing jurisdiction.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.3016 Intervention.

(1) Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene. The parties may, within 7 days of service of the motion, file a response in opposition. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(2) The motion to intervene shall contain the following information:

(a) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor, if the intervenor is not represented by an attorney or qualified representative;

(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor’s attorney or qualified representative;

(c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding;

(d) A statement as to whether the intervenor supports or opposes the preliminary agency

action:

(e) If the intervenor seeks to raise new issues, the information required by Rule 28-106.301(d)-(g);

(f) The statement required by subsection 28-106.303(2);

(g) The signature of the intervenor or intervenor's attorney or qualified representative;
and

(h) The date.

(3) Other than parties to the original proceeding, specifically-named persons who are the subject of the agency's proposed action may become a party to the proceeding by entering an appearance as a respondent and identifying how their substantial interests are being determined. Such named party respondent shall be entitled to raise issues in support of the agency's determination or defenses to the allegations in the petition.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New

Comment: The existing uniform rules governing proceedings and hearings not involving disputed issues of fact do not establish procedures for intervention. This proposed rule would establish these procedures. The proposed rule is a copy of existing Rule 28-106.205, which governs amendments to petitions in proceedings and hearings involving disputed issues of fact, with two changes. First, it includes the proposed changes from this ad hoc committee. Second, the rule references have been modified to the appropriate subsections.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.302 Notice of Proceeding.

(1) After receipt of a petition it has determined to be in substantial compliance with this Rule and to raise no issues of disputed material fact, the agency shall serve a written notice on all parties that includes:

(a) The opportunity to submit written evidence; and

(b) The opportunity to request a hearing before the agency.

(2) The notice shall provide the parties allowing at least 14 days from the date of the notice for the parties to provide material file written evidence in support of or opposition to the agency action or refusal to act or in aggravation or mitigation of any penalty which may be imposed. The notice shall also provide the parties at least 7 days to file written evidence in response to written evidence filed by another party. No further written evidence may be submitted without first obtaining leave of the agency. any "Written evidence" includes documents, memorandum of law, or and all other written material in support of or opposition to the agency action or refusal to act or in aggravation or mitigation of any penalty which may be imposed. If only written evidence is submitted, the notice shall provide the parties at least 7 that all other parties shall have 14 days to file respond in writing to that written evidence.

(23) The notice shall provide the parties at least 14 days to file a request for a hearing before the agency. The agency may schedule an informal hearing with or without such a request on the matter for the purpose of taking oral evidence or argument. If it does so, the agency shall serve written notice at least 14 days prior to the hearing, setting forth the place, date, time of the hearing, and legal authority and jurisdiction under which the hearing is to be held.

(4) If a hearing is conducted and the presiding officer overrules the objections to the

agency action or proposed action raised by the parties, the agency shall issue a written final order not later than seven days following the conclusion of the hearing.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5), 120.57(2) FS. History–New 4-1-97, Amended 3-18-98, 12-24-07, _____.

Comment: *These amendments designed to add clarity and more closely align this rule with the requirements of Section 120.57(2).*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.303 Motions.

(1) All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing and shall fully state the action requested and the grounds relied upon. The original motion shall be filed with the presiding officer. When time allows, the other parties may, within seven days of service of a written motion, file a response in opposition. No reply to the response shall be permitted unless leave is sought from and given by the presiding officer. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda. The presiding officer shall conduct proceedings and enter such orders as are deemed necessary to dispose of issues raised by the motion.

(2) All motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state whether any party has an objection to the motion and whether any party intends to file a response to the motion.

(3) Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 2-5-13, _____.

Comment: *The proposed change would require parties to indicate in a motion whether any party intends to file a response to that the presiding officer will know whether to wait the time allowed for a response to elapse before ruling on the motion.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.304 Continuances.

The presiding officer may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.3045 Discovery

After commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New _____.

Comment: Imports the discovery rule from the uniform rules governing formal procedures.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.305 Conduct of Proceedings.

The presiding officer before whom a proceeding is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, ~~including bifurcating the proceeding.~~
Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, _____.

Comment: Reference to case changed to proceeding for clarity. References to bifurcation eliminated as unnecessary in informal proceedings.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.306 Recordation.

(1) ~~Responsibility for preserving the testimony at final hearings shall be that of the~~ The agency responsible for taking final agency action. Proceedings shall ensure that any hearings shall be is recorded by a certified court reporter or by recording instruments. The agency shall serve on all parties written notice of the method of recordation not later than 7 days before the scheduled commencement of the hearing.

(2) Any party to a proceeding may, at its own expense, provide a certified court reporter for a hearing if the agency does not. The presiding officer may provide a certified court reporter. At hearings reported by a court reporter, any party who wishes a transcript of the testimony shall order the same at its own expense. If a court reporter records the proceedings, the recordation shall become the official transcript.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 3-18-98, _____.

Comment: Requires a notice of recordation in a manner consistent with the existing requirement for same in formal proceedings (Rule 28-106.214).

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.307 Post-Hearing Submittals.

~~The presiding officer may permit all parties to submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the presiding officer. Unless authorized by the presiding officer, proposed orders shall be limited to 40 pages.~~

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Repealed _____.

Comment: Deleted for lack of a law to implement. The statutory authority for proposed findings of facts and orders is found only in Section 120.57(1)(b).

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.501 Emergency Action.

(1) ~~If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall enter an emergency order summarily suspending, limiting, or restricting a license, or taking such other emergency action as is authorized by law.~~

~~(2) The agency's emergency order shall include a notice of the licensee's (or person or entity subject to the agency's jurisdiction) right to an immediate appeal of the emergency final order pursuant to Section 120.569(2)(n) or 120.60(6), F.S.~~

~~(3) In the case of the emergency suspension, limitation, or restriction of a license, unless otherwise provided by law, within 20 days after emergency action taken pursuant to section (1) of this rule, the agency shall initiate emergency proceedings in compliance with sections 120.569, 120.57 and 120.60, F.S., and Rule 28-106.2015, F.A.C.~~

~~Rulemaking Authority 14.202, 120.54(5), FS. Law Implemented 120.54(5) History – New 1-15-07, Amended 12-24-07, Repealed~~

Comment: *This section is being repealed because it is substantially similar to section 120.60(6), Fla. Stat., and because it does not have statutory authority.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-110.002 Definitions.

For purposes of this subchapter, the following terms mean:

(1) “Contract procurement process” has the same meaning as “contract solicitation or award process” as used in Section 120.57(3), F.S. This includes procurements by invitation to bid (ITB), request for proposal (RFP), or invitation to negotiate (ITN), as each is defined in Section 287.012, F.S., approval of a single source procurement, as defined in Section 287.057~~(5)~~(3)(c), F.S., or other solicitation documents as permitted by law.

(2) No Change

(3) “Competitive solicitation” or “solicitation” shall have the meaning ascribed in Section 287.012~~(97)~~(6), F.S.

(4) “Electronic posting” shall have the meaning ascribed in Section 287.012~~(11)~~(10), F.S.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.57(5) FS. History–New 4-1-97, Amended 1-15-07, _____.

Comment: *Updated citations to the statutes.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-110.003 Notice of Protest.

(1) A notice of protest shall be addressed to the agency clerk of the agency office that issued the solicitation or made any other decision that is intended to be protested; shall identify the solicitation by number and title or any other language that will enable the agency to identify it; and shall state that the person intends to protest the decision. If a bond is required, it shall not be filed with the notice unless otherwise required by law.

(2) The notice of protest must be filed with the agency clerk unless otherwise designated by the solicitation. A notice of protest shall not be filed before the 72-hour period begins. The 72-hour period begins upon electronic posting of a decision or intended decision. The notice of protest must be received by the agency before the 72-hour period expires. ~~The notice of protest must be filed with the agency clerk unless otherwise designated by the solicitation.~~

(3) No change.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.57(5) FS. History–New 4-1-97, Amended 1-15-07, _____.

Comment: *Changes to Rule 28-110.003 regarding where to file a notice of protest are*

intended to make 110.003(1) consistent with 110.003(2). Both provisions now call for filing with the agency clerk, unless otherwise designated by the solicitation. Changed the last sentence of subsection (2) to the first sentence for clarity.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-110.005 Bond.

(1) Bid protest bonds are required by Section 287.042(2)(c), F.S., for procurements under Chapter 287 (commodities, contractual services, professional services and insurance) and by Section 255.25(3)(~~e~~)(d), F.S., for procurements of leases of space in privately owned buildings. Bonds are not required for protests involving building construction projects undertaken pursuant to Chapter 255, except that Section 255.0516, F.S., authorizes school boards, community college boards of trustees and a state university board of trustees to require bonds under some circumstances. Bonds are also required by Section 337.11(5)(a), F.S., for certain procurements by the Department of Transportation.

(2) Bonds required by Section 337.11(5)(a), F.S., must be filed with the notice of protest. Other bonds are not to be filed with the notice of protest, but must be filed at the time of filing with the formal written protest ~~or within the 10-day period allowed for filing the formal written protest~~. The bond must accompany a protest filed pursuant to Section 24.109(2)(a), F.S. A bond can be in substantially the following form:

STATE OF FLORIDA ~~ADMINISTRATION COMMISSION~~ PROCUREMENT
PROTEST BOND

Bond Number: _____
Contract Number: _____

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____ a (mark one) corporation, partnership, proprietorship, organized and existing under the laws of the State of _____, and having its principal place of business at _____, as PRINCIPAL; and _____, a surety company, organized under the laws of the State of _____, and duly authorized to do business in the State of Florida, whose principal place of business is _____, as SURETY, are held and firmly bound unto the STATE OF FLORIDA, _____ (Agency), as OBLIGEE, in the amount of \$_____ for the payment of which sum we, as Principal and Surety, bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THIS BOND is issued under the provisions of _____ Florida Statutes. The above-named Principal has initiated an administrative protest regarding the Obligee's decision or intended decision pertaining to ~~(mark one) Bid Number _____ an agency's request for approval of an exceptional purchase of _____ submitted by _____~~. Said protest is conditioned upon the posting of a bond at the time of filing the formal written protest.

NOW, THEREFORE, the condition of this Bond is that if the Principal, after the administrative hearing process and/or any appellate court proceedings regarding the protest, shall satisfy all costs and charges allowed by final order and/or judgment, and interest thereon, in the event the Obligee prevails, then the obligation shall be null and void; otherwise it shall remain in full force and effect.

The Obligee may bring an action in a court of competent jurisdiction on this bond for the amount of such liability, including all costs and attorneys' fees.

PRINCIPAL: _____
BY: _____
Title: _____ (CORPORATE SEAL)
ATTEST: _____

SURETY: _____
BY: _____
Title: _____ (CORPORATE SEAL)
Florida Resident Agent: _____

(Note: Power of Attorney showing authority of Surety's agent or Attorney in Fact must be attached).

Bonds must be countersigned by an agent licensed in Florida. Section 287.042(2)(c), F.S., authorizes a cashier's check or money order in lieu of a bond, for procurements governed by Chapter 287, F.S.

(3) No change.

(4) If, at the conclusion of the proceeding and any appellate proceedings, the petitioner prevails, the agency shall return the bond, cashier's check or money order to the petitioner. If the agency prevails but the petitioner is not ordered to pay costs, the agency shall return the bond or alternate security to the petitioner. If the petitioner is ordered to pay costs, the agency shall return the bond or alternate security as provided by Section 255.25(3)(~~e~~)(d), 287.042(2)(c) or 337.11(5)(b), F.S. The entire bond may be forfeited if circumstances warrant under Section 337.11(5)(a), F.S.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Joint Administrative Procedures Committee Objection Filed – See FAW Vol. 24, No. 20, May 15, 1998, Amended 1-15-07, Joint Administrative Procedures Committee objection resolved by Chapter 2006-82, Laws of Florida, Florida Administrative Weekly Vol. 35, No. 27, July 10, 2009, _____.

Comment: *Changes to 28-110.005(2) are intended to clarify that a protest bond is due at the time of filing a formal written protest. See § 287.042(2)(c), Fla. Stat. Changes to the protest bond form are intended to simplify the form and remove reference to exceptional purchases, which are uncommon. Updated the citations to statutes.*

PENDING FURTHER COMMENT

28-106.112 Notice of agency final orders; standards; grounds to vacate and reissue agency final orders for lack of notice.

- (1) Each party shall be given notice of an agency final order. Notice shall be given to an unrepresented party by service of the final order upon that party at their address of record. Notice shall be given to a represented party by service of the final order upon that party's attorney or qualified representative at the attorney or representative's address of record. If the address of record includes an e-mail address, service may be made by e-mail, unless otherwise required by law.
- (2) A party who did not receive timely notice of a final order pursuant to subsection (1) of this rule and did not timely file a notice of appeal may file a motion with the agency and request that it vacate and reissue the final order. The motion must be accompanied by an affidavit from the party and, if appropriate, the party's representative, setting forth under oath all facts supporting the request. The motion and affidavit(s) shall be served on all parties to the underlying proceeding as set forth in rule 28-106.110.
- (3) Upon request of the moving party or any other party to the underlying proceeding, the agency may schedule and conduct an evidentiary hearing solely on the issue of whether the moving party received notice of the agency final order.
- (4) The agency shall vacate and reissue the final order if the moving party demonstrates by clear and convincing evidence that they did not receive the agency final order and failed to timely file an appeal due to agency clerical errors, errors arising from agency mistake or inadvertence, or other egregious circumstances that were not the result of the movant's own negligence.
- (5) The agency shall vacate and reissue the disputed agency final order or enter an order denying a motion filed under this subsection not later than 90 days after the motion is filed with the agency.

Comments: This rule does not authorize motions for rehearing. This rule is not designed to address or displace the potential avenue for relief recognized in Russell v. Dept. of Bus. and Prof. Reg., 645 So. 2d 117 (Fla. 1st DCA 1994) (agency may revisit final order based on a change in circumstances or upon a demonstrated public need or interest).

Rulemaking authority

120.54 Rulemaking.—

(5) UNIFORM RULES.—

(a)1. By July 1, 1997, the Administration Commission shall adopt one or more sets of uniform rules of procedure which shall be reviewed by the committee and filed with the Department of State. Agencies must comply with the uniform rules by July 1, 1998. The uniform rules shall establish procedures that comply with the requirements of this chapter. On filing with the department, the uniform rules shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection.

Statute implemented

120.569 Decisions which affect substantial interests.—

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. If a disputed issue of material fact arises during a proceeding under s. 120.57(2), then, unless waived by all parties, the proceeding under s. 120.57(2) shall be terminated and a proceeding under s. 120.57(1) shall be conducted. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.



REPORT FROM *The Florida Bar Board of Governors*

The Florida Bar Board of Governors met on July 19, 2019, in Key Largo. The major actions of the board and reports received included:

An update on the Florida Commission on Access to Civil Justice was presented by Florida Bar past president Greg Coleman, who chairs the commission's executive committee. He said the commission has been focusing on family law, where statistics show that as many as 85% of litigants appear in court without a lawyer, and on veterans' access issues. The commission's Council of Business Partners and commissioners are now speaking to business groups to point out that when people are unable to resolve their civil legal issues, they, their communities and workplaces, and the state are all negatively impacted. Coleman praised Florida Bar members who, through various legal aid societies, are making a substantial effort to help the estimated four million Floridians who live below the federal poverty level and lack access to the courts. For more information on the commission, visit <https://a2j.flcourts.org/>.

Trust Books, web-based software designed for law firms to easily manage trust accounts while staying compliant with Bar rules, was approved as the newest member benefit. The benefit, which should be available later this summer, includes a free demonstration and an individual onboarding telephone session, as well as webinars to keep members updated. Trust Books will offer Florida Bar members discounts on its "DIY" and "TEAM" subscription plans. Visit <https://www.floridabar.org/member/benefits/> to learn more about the more than 70 discounted products and services available to Florida Bar members for practice and personal needs.

The [Board Review Committee on Professional Ethics](#) reported to the board that they declined a request for an ethics advisory opinion regarding the approximately 150 lawyers in Florida who serve as Guardians ad Litem. The decision was based on the determination that the request did not meet required parameters for the Board of Governors to issue an advisory opinion. This [Florida Bar News article](#) provides information on the request.

Discussion on a proposal for registering online legal services providers was deferred to the September 20 meeting. Approved by the board's Special Committee on Technologies Affecting the Practice of Law, the voluntary program would strengthen protection of the public and expand economic opportunity for Bar members while promoting cooperative relationships with unregulated providers. The proposal was noticed to Bar members on April 15 and appeared on first reading at the board's May meeting. If approved by the board, it would still require approval by the Florida Supreme Court. Members should contact their Board of Governors representative(s) with any questions or input. Read more in this [May 10 Florida Bar News article](#).

The Board of Governors reversed the [Standing Committee on Advertising](#) and found that a law firm name that does not include the owner's official bar name is not misleading, under Bar rules. The narrow ruling was confined to the facts of this specific situation: the filer's original and current official bar name are unique, the lawyer continues to use her original official bar surname as part of her official bar name hyphenated with her married name, the firm has built a reputation using the original official bar surname, and the firm has existed in a continuous line of succession with its name unchanged. Members can pose questions about advertising, conflict dilemmas, confidentiality questions, communication concerns, trust accounting problems, and other ethics difficulties unique to the profession by calling the [Florida Bar Ethics Hotline](#) at (800) 235-8619. Hotline attorneys are authorized to respond to inquiries from members in good standing asking about their own future conduct.



REPORT FROM *The Florida Bar Board of Governors*

The Florida Bar Board of Governors met on September 20, 2019 in Destin. The major actions of the board and reports received included:

Approving a [proposed voluntary registration program](#) for online legal service providers, which is designed to protect Floridians who are increasingly turning to the Internet for their legal needs. The proposed amendments to Bar rules in support of the voluntary program submitted by the [Committee on Technologies Affecting the Practice of Law](#) are subject to Supreme Court approval. The new Chapter 23 would provide minimum requirements for approved registrants, including permissible and prohibited communications, required consumer disclosures, permitted and prohibited charges, and how the voluntary registration is granted and revoked. The proposed program encompasses entities that are already operating in a largely unregulated space. An approved registrant may market itself as being “Registered with The Florida Bar;” but, it must disclose that it is not a substitute for the services of an attorney. Registrants may only use forms approved by the Florida Supreme Court, or that have been reviewed and approved by a Florida Bar member. Read the [Florida Bar News article](#) for more information.

Adding the Time Miner app, a retroactive time capture platform for professionals who bill by the hour, as a new member benefit with a significant discount to Florida Bar members. Please visit floridabar.org/memberbenefits to learn more about the more than 70 discounted products and services available to Florida Bar members for practice and personal needs.

In responding to a request by the Supreme Court, the board voted to approve an amendment to [Chapter 21](#), adding new subdivision (c). This amended rule, if adopted by the Supreme Court, would authorize a military spouse applicant to be certified by the Supreme Court to act as a certified legal intern while the application for certification as a military spouse lawyer is pending, and describes when the certification terminates. [Official notice](#) was published in the October 2019 Florida Bar News and the petition will be filed with the Florida Supreme Court on Nov. 1.

Upholding a decision by the [Standing Committee on Advertising](#) finding that a law firm's billboard with the phrase, "ambulances chase us," is misleading because it is both illegal and unethical for ambulance drivers to solicit cases for lawyers, and because it is factually inaccurate.

Appointing Jessica M. VanValkenburgh of Stuart to serve the remainder of a three-year term ending June 30, 2022, on the [Florida Legal Services, Inc.](#), Board of Directors.

The 2020 legislative session begins on January 14. The Florida Bar will again be advocating for the profession and the courts. For the committee week schedule, information on bills of interest to the legal profession and Bar and Section positions, please visit floridabar.org/legislativeactivity. This [Florida Bar News article](#) covers the budget priorities of the court system, public defenders, state attorneys and other justice partners.

2019-2020 Administrative Law Section Committees & Liaisons
BUDGET

Committee Duties: The budget committee prepares and revises proposed budgets for submission to the executive council for approval. The budget committee is composed of the section chair, immediate past chair, chair-elect, and treasurer.

Tabitha Jackson, Chair	tabi85@hotmail.com
Stephen Emmanuel	semmanuel@ausley.com
Robert Hosay	rhosay@foley.com
Judge Gar Chisenhall	gar.chisenhall@doah.state.fl.us

LONG RANGE PLANNING

Committee Duties: The long range planning committee develops long-range goals for the section, reviews the present activities of the section and submits reports and recommendations to the executive council for adoption. The long range planning committee is composed of the chair-elect of the section and other persons the chair appoints.

Judge Gar Chisenhall	gar.chisenhall@doah.state.fl.us
Bruce Lamb	blamb@gunster.com
Stephen Emmanuel	semmanuel@ausley.com
Tabitha Jackson	tabi85@hotmail.com
Richard Shoop	richard.shoop@ahca.myflorida.com
Sharlee Edwards (South Florida Representative)	Sharlee.Edwards@weston-ins.com
Suzanne Van Wyk	suzanne.vanwyk@doah.state.fl.us

Committee Duties: The continuing legal education committee is responsible for planning the section's CLE courses.

Bruce Lamb, Chair	blamb@gunster.com
Jowanna Oates	oates.jowanna@leg.state.fl.us
Judge Cathy Sellers	cathy.sellers@doah.state.fl.us
Judge Francine Ffolkes	francine.fffolkes@doah.state.fl.us
Colin Roopnarine	croopnarine@bergersingerman.com
Virginia Dailey	vdailey@panzamaurer.com
Amy Toman	amy.toman@talgov.com
Tobey Schultz	tobey.schultz@freshfromflorida.com
Brittany Adams Long	balong@radevlaw.com
Judge Suzanne Van Wyk	suzanne.vanwyk@doah.state.fl.us
Katy McGinnis	Katy.McGinnis@myfloridalicense.com
Angela Morrison	amorrison@amorrisonlaw.com
Louise St. Laurent	louise.stlaurent@flhealth.gov
Judge Li Nelson	li.nelson@doah.state.fl.us
Marc Ito	mito@phrd.com
Kelly Kibbey	Kibbey.Kelly@flsenate.gov

LEGISLATIVE

Committee Duties: The legislative committee is composed of 3 members appointed by the section chair who also appoints the chair of the committee. The legislative committee makes recommendations to the executive council regarding requests for the section to adopt a legislative position. When the legislature is in session, the chair of the committee consults with the chair and, if available, the chair-elect of the section. The chair of the committee may then act on pending or proposed legislation in accordance with section legislative positions if it is not reasonably possible or feasible for the executive council to act.

Fred Dudley, Chair	dudley@mylicenselaw.com
Judge Suzanne Van Wyk	suzanne.vanwyk@doah.state.fl.us
Robert Hosay	rhosay@foley.com

PUBLICATIONS

Committee Duties: The publications committee is composed of the chair of the committee, the editors of the section's column in The Florida Bar Journal and the section's newsletter, and any other section members appointed by the chair. The editors for the section's publications are responsible for the timeliness, quality, and contents of those publications.

Lyyli Van Whittle, Co-Chair (Journal)	Lyyli.VanWhittle@perc.myflorida.com
Jowanna N. Oates, Co-Chair (Newsletter)	oates.jowanna@leg.state.fl.us
Tiffany Rodenberry, Newsletter Co-Editor	Tiffany.Roddenberry@hkllaw.com

PUBLIC UTILITIES LAW

Committee Duties: The public utilities law committee's purpose is to gather and disseminate information, share expertise, and advise its members on the legal, technical, and economic issues related to regulated utilities providing electric, gas, water, sewer, and telephone services

Cindy Miller, Co-Chair	milcindy@gmail.com
Michael Cooke, Co-Chair	cookem@gtlaw.com

LAW SCHOOL OUTREACH

Committee Duties: The committee coordinates section activities with Florida law schools to stimulate students' interest in administrative law with the goal of increasing the number of law students with an interest in administrative law.

Sharlee Edwards, Chair	Sharlee.Edwards@weston-ins.com
Judge Bruce Culpepper	bruce.culpepper@doah.state.fl.us
Judge Francine Ffolkes	francine.fffolkes@doah.state.fl.us
Judge Cathy Sellers	cathy.sellers@doah.state.fl.us

Judge Suzanne Van Wyk	suzanne.vanwyk@doah.state.fl.us
Katy McGinnis	Katy.McGinnis@myfloridalicense.com
Jeanne Curtin	curtinj@elderaffairs.org
Louise St. Laurent	louise.stlaurent@flhealth.gov
Christine Laney	christine.laney@polk-fl.net
Maria McCorkle	mccorklem@flcourts.org
Simone Marsteller	simone.marsteller@djj.state.fl.us
Patrick Perez	patrick@cityattorneys.legal

NOMINATING

Committee Duties: The nominating committee is composed of 3 executive council members appointed by the chair to propose a slate of candidates for any vacancy. The nominating committee is also responsible for the selection and criteria of any award or recognition authorized by the executive council.

Jowanna Oates, Chair	oates.jowanna@leg.state.fl.us
Richard Shoop	richard.shoop@ahca.myflorida.com
Judge Anthony Miller	abmilleresquire@gmail.com
Any Schrader	aschrader@bakerdonelson.com

YOUNG LAWYERS

Committee Duties: The committee is responsible for cultivating interest in the section among young lawyers (those under the age of 36 and those who have been a member of the Bar for 5 years or less) and planning, organizing, and promoting section activities and benefits specifically designed for young lawyers.

Matthew Bryant, Chair	mbryant@penningtonlaw.com
James Ross	jross@mennanlawfirm.com
Tabitha Jackson	tabi85@hotmail.com
Kelly Kibbey	Kibbey_Kelly@flsenate.gov
Sean Gellis	sean.gellis@dms.myflorida.com
Paul Drake	p.drake@gfblawfirm.com
Christina Shideler	shideler.christina@gmail.com
Ben Grossman	bgrossman@foley.com
Judge Gar Chisenhall	gar.chisenhall@doah.state.fl.us
Daniel Brackett	daniel.brackett@myfloridahouse.gov
Will D. Hall	whall@deanmead.com
Joaquin Alvarez	joaquin.alvarez@flofr.com
Lyyli Van Whittle	Lyyli.VanWhittle@perc.myflorida.com
Louise St. Laurent	louise.stlaurent@flhealth.gov
Katy McGinnis	Katy.McGinnis@myfloridalicense.com
Maria McCorkle	mccorklem@flcourts.org
Patrick Perez	patrick@cityattorneys.legal
Kristen Larson	kristen.larson@myfloridacfo.com

Paula Savchenko	PaulaSavchenko@FloridaSalesTax.com
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TECHNOLOGY

Committee Duties: The committee is responsible for the design and content of the section's website as well as any social media platforms the section decides to participate in. The goal of the committee is to promote the section through various technological platforms, use those platforms to communicate with the section's membership, keep the section's membership informed of the section's activities, and alert the section's membership of news that affects the practice of administrative law.

Paul Drake, Chair	p.drake@gfblawfirm.com
Judge Gar Chisenhall	gar.chisenhall@doah.state.fl.us
James Ross	jross@meenanlawfirm.com
Christina Shideler	shideler.christina@gmail.com
Tabitha Harnage	Tabitha.Harnage@myfloridacfo.com
Judge Suzanne Van Wyk	suzanne.vanwyk@doah.state.fl.us
Gregg Morton	greggrileymorton@gmail.com
Jed Berman	jberman@infantinoberman.com
Paula Savchenko	PaulaSavchenko@FloridaSalesTax.com

AD HOC SFGAP CERTIFICATION EXAM

Committee Duties:

Judge Gar Chisenhall	gar.chisenhall@doah.state.fl.us
Judge Cathy Sellers	cathy.sellers@doah.state.fl.us
Judge Francine Folkes	francine.ffolkes@doah.state.fl.us
Codey Leigh	codey.leigh@escambiaclerk.com
Angela Morrison	amorrison@amorrisonlaw.com

AD HOC MEMBERSHIP COMMITTEE

Committee Duties:

Gigi Rollini, Chair	grollini@stearnsweaver.com
Angela Morrison	amorrison@amorrisonlaw.com
Jowanna N. Oates	oates.jowanna@leg.state.fl.us
Judge Cathy Sellers	cathy.sellers@doah.state.fl.us
Judge Jessica Varn	jessica.varn@doah.stat.fl.us
Christina Shideler	shideler.christina@gmail.com

SECTION LIAISONS

Fla. Bar Board of Governors	Larry Sellers	larry.sellers@hkllaw.com
Fla. Bar CLE Committee	Bruce Lamb	blamb@gunster.com
Environmental & Land Use	Judge Francine Ffolkes	francine.ffmpeg@doah.state.fl.us
Government Lawyers	Anthony Miller	Anthony.Miller@ast.myflorida.com
Health Law	Bruce Lamb	blamb@gunster.com
RPPTL	Fred Dudley	dudley@mylicenselaw.com
Labor & Employment	Judge Robert Kilbride	robert.kilbride@doah.state.fl.us
Young Lawyers Division	Paul Drake	p.drake@gfblawfirm.com
Animal Law	Gregg Morton	greggrileymorton@gmail.com
Appellate Court Rules Committee – Administrative Law Practice Subcommittee	Gigi Rollini	grollini@stearnsweaver.com
Diversity and Inclusion	Lyyli Van Whittle	Lyyli.VanWhittle@perc.myflorida.com
General Counsel	Stefan Grow	Stefan.Grow@ahca.myflorida.com

ADMINISTRATIVE LAW SECTION EXECUTIVE COUNCIL MEETING
FRIDAY, JUNE 28, 2019 – 1:00 P.M. TO 3:00 P.M.
BOCA RATON RESORT AND CLUB
BOCA RATON, FLORIDA

Present at the meeting were Gar Chisenhall, Jr., Chair; Brian Newman, Chair-Elect; Bruce Lamb, Secretary; Stephen C. Emmanuel, Treasurer; Sharlee Hobbs Edwards, Francine Marie Ffolkes, Tabitha Gail Jackson, Jowanna Nicole Oates, Tara Renne Klimek Price, Amy Schrader, Cathy M. Sellers, Richard Shoop, Suzanne Van Wyk, Robert Kilbride, Maria McCorkle, and Larry Sellers. In addition, the following participated via telephone: Marc Ito, Paul Drake, Angela Morrison, Gigi Rollini, Patricia Nelson, James Trump, and Louise St. Lauren.

I. Call to Order

II. Preliminary Matters

- A. Consideration of Minutes. The April 6, 2019 Meeting Minutes were considered. Gar Chisenhall requested a change on page 4 under Section V, paragraph A to correct a misspelling changing Charlie to Sharlee. With that modification the Minutes were moved for approval by Brian Newman and seconded by Richard Shoop, and adopted by acclamation.
- B. Treasurer's Report. Stephen Emmanuel gave the Treasurer's Report. He reported the income was stable except for that income that is derived from our allocation of investment interest. During the past several years approximately \$10,000 of our income has been derived from the endowment. There was a down stock market with a \$6,000 loss in May. The year to date interest gain is \$7,000. Therefore he is optimistic that the interest income will rebound. Expenses are lower this year due to the Section no longer paying for an independent legislative consultant and lower printing cost. He believes that we should have a net gain in our balance at the end of the year.
- C. Chair's Report. Judge Chisenhall had provided a written report that he had prepared to submit to the Florida Bar. He reminded the counsel that SFGAP exam will become the SGAP exam in the near future. This year's examination will reduce the Federal content to approximately 20%. He reported that the incoming Chair to the SFGAP exam committee and he are working with Angela Morrison to get the word out in regard to the revisions to the examination and to have materials placed in a "drop box" for study purposes. He requested information from members in regard to the issues presented. Judge Chisenhall then introduced Jared Krukar who is the outreach committee chair for the Appellate Law Section. Mr. Krukar indicated that he would like to work with the Administrative Law Section on mutual projects. Judge Chisenhall advised that he is a member of that Appellate Law Section and it is very efficient and that we should conferring with the Appellate Law Section.

At this point in time Judge Chisenhall went out of order in the agenda to allow awards to be presented. Chief Judge Robert Cohen was presented with the S. Curtis Kiser, administrative lawyer of the year award. Judge Chisenhall also recognized that Judge Cohen had been presented with the Claude Pepper Award for outstanding government lawyer. Judge Chisenhall reviewed the many accomplishments and contributions of Judge Cohen. Judge Cohen gave brief remarks in accepting the award. The Administrative Law Section Service Award was presented to Jowanna Oates for her many contributions to the section. Jowanna in accepting the award stated that her work at the section is a “labor of love.”

At this point, Board of Governors member, Larry Sellers, was recognized to introduce Michael Tanner, a candidate for President-Elect of the Florida Bar. Mr. Tanner made comments to the section members.

The section then returned to its regular agenda items to consider:

III. Committee Liaison Reports.

- A. Nominating Committee. The first report was from Jowanna Oates as Chair of the nominating committee. Jowanna thanked Richard Shoop for his contributions to the committee. She then presented the slate noting that by operation of our bylaws Brian Newman will automatically become the Chair. The remaining slate of officers was as follows: Chair-Elect – Bruce Lamb; Secretary – Stephen Emmanuel; Treasurer - Tabitha Jackson. In addition, the following individuals were nominated to serve as members of the Executive Council with the term ending 2021: Fred Dudley, Sharlee Hobbs-Edwards, Clark Jennings, Anthony Miller, Patricia Nelson, Marc Ito, Lyyli Van Whittle and the following nominated to complete an Executive Council term ending in 2020: James Ross. Jowanna moved the slate and Judge Chisenhall seconded the slate. It was approved by acclamation. Jowanna observed that James Ross is to complete the term of Tabitha Jackson who has been elevated to being an officer.
- B. Continuing Education Committee. Bruce Lamb presented the continuing education committee report. He advised the Council that since our last meeting the Administrative Law Section had presented a webinar series which included Pat Gleeson on Public Records, Virginia Dailey on Declaratory Statements, Marti Chumbler on Open Records, Tobey Schultz on Licensing and Fred Springer on Procurement Issues. In addition Bruce advised the council members that a full day CLE on Advanced Topics in Administrative, Environmental, and Government Law was presented on May 31, 2019, in conjunction with the Land Use Law and Government Lawyer Sections. Cathy Sellers was recognized as chairing the presentation for the administrative law section. Bruce reported that there were 77 attendees. Finally, Bruce reported that we are developing a new webinar series and have six programs and nine volunteers to make presentations.

C. Publications.

1. Newsletter. Jowanna Oates presented the report and advised that the August issue had been completed that the September issue was almost ready for publication. She continues to need articles and agency snapshots. She recognized Judge Van Wyk for preparing a snapshot.

2. The Journal. Jowanna Oates presented the report and noted that Richard Shoop had prepared an article for publication.

3. Florida Administrative Practice Manual. Jowanna Oates reported that the Florida Administrative Practice Manual 12th Edition is now available. Subsequently, there was a discussion in regard to continuing to publish the manual in a paper format versus an electronic format. No change was made to the current format.

D. Legislative Report. Brian Newman presented the report and indicated that no significant bills for the administrative law section interest had passed. He believes that there may be a rule making bill presented next year. Larry Sellers also reported that there was a lot of attention this year on regulatory costs. He believes that the issue of the manner in which DOAH Judges are selected may be revisited next year.

E. Public Utilities Law. Judge Chisenhall noted that a report was included in the materials.

F. Board Liaison Report. Larry Sellers reported that the agenda materials had written reports concerning the last two meetings. At the May meeting the recommended budget of approximately \$44 million was approved. Approximately half of that is devoted to lawyer regulation. He was pleased that there have been no dues increase and noted that we have the second lowest Bar dues in the United States. He also noted that the Bar had a good year in the legislature with no adverse legislation and that the Bar's role is to protect the judicial branch from attack. He recognized that there may be challenges going forward in regard to issues such as Bar regulation. Finally, he noted that the legislature had authorized the payment of Bar dues for government lawyers as had been the practice. Finally in the area of member benefits he reported that there is a new legal research tool that will be available for use by Bar members. The next meeting is a joint meeting with the Young Lawyer Section.

G. Ad Hoc Rules Committee. Larry Sellers also reported on behalf of the Ad Hoc Rules Committee which consists of eight members. There is an initial report in the agenda materials. The next step is to circulate this report to Section members for input. The committee has met seven times and hopes to get comments by July for their August meeting. Larry recognized Paul Drake as serving as their "reporter". Paul commented that he has posted the draft revisions on the website. Larry noted that there had been a lot of comments in regard to the use of qualified representatives at hearings. Questions were

posed to Larry in regard to whether the meetings can be attended and in regard to the issues being addressed relating to qualified representatives. This led to a discussion regarding whether there are any limits to entities being represented at hearing by corporate representatives. Thereafter, there was a discussion in regard to the mechanism for removing an individual from serving as a qualified representative. Judge Sellers stated that she believes that an Administrative Law Judge has general authority to enter orders to control proceedings and therefore can deal with qualified representative issues.

H. Law School Liaison. No Report.

I. Council of Sections. No Report.

J. Section/Division Liaison Reports.

1. Environmental and Land Use Law. Francine Ffolkes reported that the Executive Council met yesterday and the section presented a CLE program on a case law and legislative update. The General Counsel's round table was well attended by new agency general counsels. Their section is planning more CLEs and is seeking Executive Council participation. It also appointed several new members.

2. Health Law. Bruce Lamb reported in regard to an issue that had been addressed at the Health Law Section meeting on the previous day. House bill 369 included a revision to the Patient Brokering Act Section 817.505 by changing one of the exemptions. He reported that the previous language provided for an exemption for any act that is not prohibited by the Federal anti-kickback statute. The new language states that the statute does not apply to any payment or practice specifically authorized by the anti-kickback statute. Bruce also noted that Section 817.505 allows for a criminal prosecution of those who participate in the development of a prohibited practice, including lawyers. There was a discussion in regard to the motivation for this legislative change. Bruce related that it is his understanding that the legislative change came out of some concerns from state attorneys who were prosecuting patient brokering cases and had received some circuit court orders that created the concern. He reported that the change was unnecessarily broad in his view. He further indicated that the Health Law Section may seek to take a legislative position in the upcoming session.

3. Government Lawyer. No Report.

4. YLD Liaison. Tabitha Jackson reported that the YLD had had a lot of successful events and they want to now analyze the impact of the same. Several of their programs benefited charitable organizations. They intend to consider repeating the events that were successful. She indicated that they would work with the Appellate Law Section to develop a "table for eight" program and possibly offer a CLE in conjunction with that program taught by a panel. She

would like to obtain a \$2,000 budget extension in the next budget. Judge Sellers recommended that they consider inviting the Commissioner for Agriculture to discuss hemp regulations. Judge Van Wyk agreed that this was a good topic and noted that the Department of Agriculture will be doing rule making on hemp regulation.

5. RPPTL. No Report.

6. Labor and Employment. Judge Kilbride reported that the section met yesterday and that they had rolled out a redesigned website archiving important decisions. The Labor and Employment Section is desirous of developing a trial academy and would like to share with the Administrative Law Section its plans. Judge Kilbride noted that Brian had begun the process of developing this type of program for the ALS. Brian then updated the Executive Council on the status of the ALS trial academy stating that it will be a week long program with lectures, workshops and a mock trial the week of September 9th.

7. Animal Law. No Report.

8. TFB Diversity and Inclusion. No Report.

9. Appellate Court Rules. Gigi Rollini reported that there had been no referrals to the administrative subcommittee. The committee has indicated that it may wish to address the need to give notice to the Attorney General's Office if a constitutional question arises during an administrative proceeding. The committee passed a provision that will require that parties filing a motion raising a constitutional issue serve the AG's office. However, she noted that there is no sanction or adverse impact for failure to comply with the rule.

K. DOAH Update. Judge Van Wyk gave the report. She indicated that there were no real changes since the last meeting. There are still two applications pending for the position of chief judge. Judge Ffolkes reported that Donald Alexander is retiring and that Scott Boyd will be retiring in the fall. Judge Oates reported that Scott Boyd was the former chair of the administrative law section and that we should consider giving him a gift at the retirement party. She made a motion to authorize such a gift and Brian Newman seconded it. It was approved by acclamation. Brian then suggested that we could perhaps invite him to the October meeting to present the award.

IV. Old Business.

Sharlee Edwards reported on membership development and the efforts of the South Florida chapter. They have had several events including a meet and greet and they are planning a bid protest legal education program. They want to try to get together with other sections to partner in programs. Judge Ffolkes indicated that the Environmental and Land Use Law Section would be interested in participating. Judge Chisenhall and Brian Newman thanked Sharlee for her efforts.

Judge Van Wyk presented information regarding to the Florida Bar Foundation. She indicated that the Foundation members are looking for support from the sections and that they will make a budget request in the future.

V. New Business.

Election of Officers and Council Members was previously handled by the Council.

VI. Informational.

Section bylaws. Jowanna Oates reminded the section that former chairs remain members of the Executive Council. She also advised that the Council of Sections is reviewing the bylaws revision process and will be seeking to streamline the revision process.

VII. Time and Place of Next Meeting.

The fall meeting will occur in October of 2019 but the specific date and location has not been set. There will also be a budget meeting in October and long range planning retreat in March of 2020.

At this point Judge Chisenhall recognized Calbrail Banner for all of her services to the section and the Executive Council. The Council presented Calbrail with a gift. Judge Sellers noted that Calbrail really assisted in developing both the Pat Dore program and the Advanced Topics program on a very narrow time frame. Other gifts and awards were then presented including a presentation to Judge Chisenhall for his service as the section Chair.

The meeting was then adjourned.