

CHAIR:

Richard J. Shoop
AHCA
2727 Mahan Dr., MS #3
Tallahassee, FL 32308-5407
(850)412-3630

CHAIR-ELECT:

Jowanna N. Oates
Joint Administrative Procedures Committee
680 Pepper Bldg.
111 W. Madison St.
Tallahassee, FL 32399-1400
(850)488-9110

TREASURER:

Garnett W. Chisenhall, Jr.
Division of Administrative Hearings
1230 Apalachee Pkwy.
Tallahassee, FL 32399
(850)488-9675

SECRETARY:

Robert H. Hosay
Foley & Lardner, LLP
106 E. College Ave., Ste. 900
Tallahassee, FL 32301
(850)222-6100

Administrative Law Section

**IMMEDIATE PAST CHAIR:**

Daniel E. Nordby
215 S. Monroe St., Ste. 804
Tallahassee, FL 32301-1858
(850)521-0600

BOARD LIAISON:

Lawrence E. Sellers, Jr.
P.O. Box 810
Tallahassee, FL 32302-0810
(850)425-5671

P.U.L.C. CHAIR:

Michael G. Cooke
625 E. Twiggs St., Ste. 100
Tampa, FL 33602-3925
(813)318-5700

EXECUTIVE COUNCIL:**Terms Expiring 2017:**

Frederick R. Dudley
Tallahassee
Stephen C. Emmanuel
Tallahassee
Clark R. Jennings
Tallahassee
Bruce D. Lamb
Tampa
Patricia A. Nelson
Tallahassee
Brian A. Newman
Tallahassee
Christina Shideler
Tallahassee

Terms Expiring 2016:

J. Andrew Bertron, Jr.
Tallahassee
Francine M. Folkes
Tallahassee
Brent McNeal
Tallahassee
Frederick J. Springer
Tallahassee
Lynne A. Quimby-Pennock
Tallahassee
Suzanne Van Wyk
Tallahassee
Amy Schrader
Tallahassee

SECTION ADMINISTRATOR:

Calbrail L. Bennett
651 E. Jefferson St.
Tallahassee, FL 32399-2300
(850)561-5623
Fax: (850) 561-9427
cbennett@flabar.org

Administrative Law Section Executive Council Meeting

Friday March 18, 2016

10:00a – 11:30p

Hotel Duval
Tallahassee, FL

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

AGENDA

- I. CALL TO ORDER- Richard Shoop, Chair
- II. PRELIMINARY MATTERS
 - A. Consideration of Minutes
 1. October 2015 & January 2016 EC Call (Executive council meeting) (**Exhibit A**)
 - B. Treasurer's Report- Garnett Chisenhall
 1. 02/2016 Detail Statement of Operations (**Exhibit B**)
 - C. Chair's Report- Richard Shoop
- III. Committee / Liaison Reports
 - A. Continuing Legal Education- Bruce D. Lamb (**Exhibit C**)
 1. Adv Topics in Admin Law (joint with ELULS & GLS) April 15, 2016 – Tallahassee, FL (Hotel Duval)
 2. Practicing Before the Supreme Court June 2016 – Tallahassee, FL
 - B. Publications
 1. Newsletter- Elizabeth W. McArthur / Jowanna N. Oates
 2. TFB *Journal*- Stephen C. Emmanuel
 3. Florida Administrative Practice- Elizabeth W. McArthur
 - C. Legislative -Linda M. Rigot/Fred R. Dudley/Daniel E. Nordby
 - D. Public Utilities Law- Michael G. Cooke/Cynthia B. Miller
 - E. Law School Liaison - Lynne Quimby-Pennock
 - F. Nominating Committee
 - G. Long Range Planning Committee

THE FLORIDA BAR

H. Budget Committee – Garnett Chisenhall

I. Ad Hoc Pro Se Consultation Committee – Richard J. Shoop

J. Ad Hoc Young Lawyers Committee – Christina Siderer

K. Ad Hoc Certification review Study Guide Committee – John Vanlaningham

L. Section / Division Liaison

1. Board of Governors Liaison – Lawrence E. Sellers, Jr. (**Exhibit D**)
2. CLE Committee Liaison – Bruce D. Lamb
3. Council of Sections – Clark R. Jennings
4. Environmental and Land Use Law- Francine M. Folkes
5. Health Law - Allen R. Grossman
6. Government Lawyer- Lynne Quimby-Pennock
7. YLD Liaison- Dustin Metz
8. RPPTL- Frederick R. Dudley
9. Labor and Employment – Robert Kilbride

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

IV. OLD BUSINESS

V. NEW BUSINESS

A. Robert Downie, GLS Chair – Joint Membership Increase

VI. INFORMATIONAL

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

VII. TIME AND PLACE OF NEXT MEETING

- A. March 18, 2016 – Tallahassee, FL (Long Range Planning Meeting) **Exhibit F**
- B. June 17, 2016 – Orlando, FL (In Conjunction with the Florida Bar Annual Convention)

VIII. ADJOURNMENT

Florida Bar Administrative Law Section Executive Council Meeting

Minutes

Date: October 16, 2015

The meeting was held on October 16, 2015, at the Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Tallahassee, Florida.

Call to Order	The meeting was called to order at 2:08 p.m. by Richard J. Shoop (Chair).
Consideration of Minutes	Brian A. Newman moved to approve the June 26, 2015, minutes; Jowanna N. Oates seconded; and the motion was approved.
Treasurer's Report (Garnett W. Chisenhall, Jr.)	Judge Garnett W. Chisenhall, Jr. reviewed the financial documents included in the meeting packet. Judge Chisenhall noted that the Bar is currently preparing the budget for 2016; if anyone has any concerns, please contact Calbrail L. Bennett by October 22, 2015.
Chair's Report (Richard J. Shoop)	Mr. Shoop thanked the Executive Council for its hard work this year. The Section's "Day of Service" will take place on October 24, 2015. The Executive Council will stuff backpacks at Second Harvest of the Big Bend. Mr. Shoop will report on the Section's activities at the Board of Governors' meeting in January.
Liaison/Committee Reports	<p><u>Continuing Legal Education</u> – Bruce D. Lamb reported that the Public Utilities Committee seminar held on September 11, 2015, and the Practice Before DOAH CLE on October 2, 2015, were successful. Dates have been reserved in December, January, and February for a webinar series; one or more volunteers are needed to serve as program chairs. If anyone has topic ideas or is interested in presenting, please contact Mr. Lamb. Additionally, a chair is needed to work with the Government Lawyers and Environmental Law Sections to develop the Advanced Topics in Administrative Law scheduled for April 15, 2016. Frederick R. Dudley is willing to assist.</p> <p><u>Publications</u> – Jowanna N. Oates reported that the article deadline for the September issue of the newsletter is October 16, 2015. The article deadline for the March issue of the newsletter is January 16, 2016. Ms. Oates also indicated that the newsletter editors are always in need of authors for feature articles and agency snapshots. Included in the meeting materials is a list of agencies that have not been written about recently. Stephen C. Emmanuel reported that Tim Jansen has written an article about</p>

student misconduct hearings that will be in a coming issue of the *Florida Bar Journal*. Additionally, Judge Chisenhall is working on an article for the *Florida Bar Journal*. Mr. Emmanuel also reported that the January issue of the *Florida Bar Journal* is dedicated to the topic of “mindfulness.”

Legislative – Daniel E. Nordby reported that interim committee meeting week and special session will begin on October 19, 2015. House Bill 183 (Adkins) which pertains to Administrative Procedures will be heard on October 20, 2015, in the Rulemaking Oversight and Repeal Committee. A similar bill, Senate Bill 372 (Lee) has been filed. Mr. Dudley noted that he would like to see the Section take a proactive role with legislation pertaining to attorneys’ fees.

Public Utilities Law – No report

Board of Governors Liaison – Lawrence E. Sellers, Jr. is attending the Board of Governors meeting. The Board of Governors unanimously rejected the reciprocity proposal.

Law School Liaison – Judge Lynne A. Quimby-Pennock has contacted all twelve (12) of the state’s law schools and extended invitations to hold networking noshes. Judge Quimby-Pennock has scheduled the following noshes: February 3, 2016 (Barry University); February 11, 2016 (Florida International University); February 16, 2016 (University of Florida); February 29, 2016 (Florida State University); and March 8, 2016 (St. Thomas). Volunteers are needed to attend the noshes at St. Thomas, Florida International, and Barry University.

CLE Committee Liaison – No additional report

Council of Sections – No report

Section/Division Liaison

1. Environmental – Ms. Bennett reported that the Environmental Law Section has a CLE scheduled for January 2016.
2. Health – Mr. Lamb noted that PRN attended the Section’s last meeting and responded to questions.
3. Government Lawyers – No report
4. YLD Liaison – The Division is seeking mentors for its law school mentoring program. The Division is encouraging sections to : 1.) offer free/discounted memberships for young lawyers; 2.) form a young lawyer’s committee; 3.) provide substantive information for the Division’s website; 4.) provide fellowships for young lawyer’s to attend section meetings; and 5.) co-sponsor webinars with the Division.

-
5. RPPTL – Mr. Dudley reported that the construction lawyers committee of the Section has increased its interest in administrative law.
 6. Labor and Employment – Judge Robert Kilbride is on the Executive Council and serves as the liaison to the Administrative Law Section. Frank Brown is the new chair of the Labor and Employment Law Section. The Section’s focus for the upcoming year is improving technology. Judge Kilbride noted that the Section has a list-serv which allows section members to discuss issues.

DOAH Update – Judge Suzanne Van Wyk reported that Judge Chisenhall and Judge Kilbride are the newest judges.

Budget Committee – Judge Chisenhall reported that the Young Lawyers Committee needs a budget line item. Previously, the Committee shared the Law School Liaison Committee’s line item. Mr. Dudley moved that the \$3,000.00 currently allocated to the Law School Liaison Committee be divided equally between the two committees, with the option to revisit the allocation in the future if necessary; Mr. Newman seconded; and the motion was approved. The Council discussed providing reimbursement to government lawyers attending the Bar’s annual meeting. Mr. Dudley moved that \$2,100.00 be allocated for reimbursement to government lawyers traveling to the Bar’s annual meeting; Mr. Nordby seconded; and the motion was approved.

Pro Se Consultation Ad Hoc Committee – Amy W. Schrader reported that the Committee has met with Florida State University College of Law in order to establish a training program to train students to assist pro se clients. To date, two training sessions on procedures at DOAH and the Florida Commission on Human Relations have been held. Approximately thirty (30) students have participated in the training. The training sessions have been recorded for students who could not attend both sessions. Ms. Schrader stated that the Committee hopes to identify attorneys to serve as mentors.

Judge Van Wyk noted that DOAH’s initial order has removed information concerning the availability of assistance from Legal Services of North Florida and language has been added concerning the availability of law student assistance for litigants in the local area. If the pilot program is successful, it may be expanded to other areas.

Mr. Dudley raised an issue regarding qualified representatives; Mr. Shoop suggested that Judges Van Wyk and Chisenhall poll the administrative law judges to see if there is an issue which can be addressed at the Section’s March meeting. Judge Van Wyk also offered to speak to Judge Cohen about the issue.

Young Lawyers Committee – Christina Shideler reported that the Committee’s social held last month was well attended. The Committee is looking at developing additional programs and activities to get young lawyers involved with the Section.

	<p>The Committee is planning a rookie camp for DOAH proceedings for March 2016 in conjunction with the Tallahassee Women Lawyers. A Table for 8 is scheduled for November 10, 2015, with Donna Blanton, Judge Elizabeth McArthur, and Colin Roopnarine.</p>
Old Business	<p>None</p>
New Business	<p><u>Leadership Academy Scholarship</u> – Mr. Shoop informed the Council that the Section has received a request to sponsor a Leadership Academy Fellow in the amount of \$2,500.00. Mr. Shoop noted that Environmental, Public Interest, and Government Lawyers Sections have opted not to sponsor fellows. The Council opted not to sponsor a fellowship.</p> <p><u>Proposed Website Changes</u> – Mr. Shoop reviewed potential changes to the website that could be made based upon the Bar’s Program and Evaluation Committee report. A master calendar can be added to the Section’s website for \$1,425.00. Additionally, a searchable database of the Section’s Newsletter can be added to the website for approximately \$8,800.00 - \$9,500.00. The Council opted not to pursue either option.</p> <p><u>Renewal of Linda Rigot’s contract</u> – Mr. Nordby moved that Linda Rigot’s contract be renewed; Mr. Newman seconded; and the motion was approved. Ms. Oates abstained from the discussion and vote.</p> <p><u>Ad Hoc Committee to Compile and Update Study Materials for Certification Exam</u> - Mr. Dudley moved that a committee comprised of three (3) board certified attorneys, including an administrative law judge, be created in order to compile materials for the examination; Ms. Oates seconded; and the motion was approved.</p> <p><u>Social Media</u>- Ms. Shideler noted that social media would be useful in advertising events. Mr. Newman moved that the Young Lawyers Committee be permitted to create a Facebook page for the Section; Brent McNeal seconded; and the motion was approved.</p> <p>Mr. Dudley suggested that the Section research the viability of creating a list-serv. J. Andrew Berton, Jr. noted the problems encountered with the Section’s prior attempt at establishing a list-serv; he suggested that if one is created, it be used to advertise Section activities to the membership.</p>
Time and Place of Next Meeting	<p>The next meeting will be a budget telephone conference call on November 18, 2015 (tentatively at 10:00 a.m.). The long range planning retreat will be held on March 18, 2016, at 10:00 a.m. in Tallahassee, Florida.</p>
Adjournment	<p>Ms. Oates moved that the meeting be adjourned; Mr. Newman seconded; and the meeting was adjourned at 3:40 p.m.</p>
Attendance	<p>Richard J. Shoop, Jowanna N. Oates, Garnett W. Chisenhall, Jr., Daniel E. Nordby, Frederick R. Dudley, Stephen C. Emmanuel, Bruce D. Lamb, Brian A. Newman,</p>

	Christina Shideler, J. Andrew Berton, Jr., Brent McNeal, Suzanne Van Wyk, Amy W. Schrader, Robert Kilbride, Jamie Jackson, James Ross, and Sharlee Edwards.
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------

Respectfully Submitted,



Jowanna N. Oates
Chair-Elect

Date of Approval: _____

	January 2016 Actuals	YTD 15-16 Actuals	Budget	Percent Budget
Administrative Law ~~~~~				
31431 Sect Dues	45	25,477	26,875	94.80
31432 Affil Dues	0	200	350	57.14
	-----	-----	-----	-----
Total Dues Income Net	45	25,677	27,225	94.31
	-----	-----	-----	-----
32191 CLE Committee Course	1,051	3,263	6,300	51.79
32293 NonSect Mem Cost Dif	163	1,383	2,500	55.32
35700 Member Srvc Prog	0	0	2,400	0.00
38499 Investment Alloc	-4,913	-12,288	6,376	-192.72
	-----	-----	-----	-----
Other Income	-3,699	-7,642	17,576	-43.48
	-----	-----	-----	-----
Total Revenues	-3,654	18,035	44,801	40.26
	-----	-----	-----	-----
36998 Credit Card Fees	1	4	50	8.00
51101 Employee Travel	0	0	411	0.00
71005 Internet Charges	31	186	450	41.33
84001 Postage	0	0	75	0.00
84002 Printing	0	0	1,300	0.00
84003 Officers Office Exp	0	0	500	0.00
84006 Newsletter	2,591	4,634	10,500	44.13
84007 Membership	0	0	715	0.00
84009 Supplies	0	0	50	0.00
84010 Photocopying	0	7	50	14.00
84051 Officers Travel Exp	0	0	1,250	0.00
84052 Mtg Travel Exp	0	0	1,000	0.00
84054 CLE Speaker Exp	0	0	100	0.00
84101 Committee Exp	0	8	500	1.60
84201 Board Or Council Mtg	0	49	300	16.33
84202 Annual Mtg	0	0	2,210	0.00
84205 Section Service Prog	0	0	750	0.00
84209 Retreat	0	0	3,000	0.00
84299 Public Utility Comm	0	0	1,750	0.00
84301 Awards	0	0	700	0.00
84310 Law School Liaison	0	153	3,000	5.10
84422 Website	120	1,050	2,500	42.00
84501 Legis Consultant	7,500	7,500	7,500	100.00
84701 Council Of Sections	0	300	300	100.00
84998 Operating Reserve	0	0	4,094	0.00
84999 Miscellaneous	0	0	100	0.00
	-----	-----	-----	-----
Total Operating Expenses	10,243	13,891	43,155	32.19
	-----	-----	-----	-----
31433 Section Mgmt Fee	35	18,797	19,495	96.42
	-----	-----	-----	-----
Total TFB Support Services	35	18,797	19,495	96.42
	-----	-----	-----	-----

	January	YTD		
	2016	15-16		
	Actuals	Actuals	Budget	Percent
				Budget
Administrative Law				
~~~~~				
	-----	-----	-----	-----
Total Expenses	10,278	32,688	62,650	52.18
	-----	-----	-----	-----
	-----	-----	-----	-----
Net Operations	-13,932	-14,653	-17,849	82.09
	-----	-----	-----	-----
21001 Fund Balance	0	198,014	212,545	93.16
	-----	-----	-----	-----
Total Current Fund Balance	-13,932	183,361	194,696	94.18
	-----	-----	-----	-----


BOCA RATON  
FT. LAUDERDALE  
JACKSONVILLE  
KEY LARGO  
MIAMI  
ORLANDO



**GUNSTER**

ATTORNEYS AT LAW

PALM BEACH  
STUART  
TALLAHASSEE  
TAMPA  
VERO BEACH  
WEST PALM BEACH  
WINTER PARK

**TO:** Administrative Law Section Executive Council  
**FROM:** Bruce Lamb   
**IN RE:** Continuing Education Committee Report  
**DATE:** February 24, 2016

---

Please consider this to be the report of the Continuing Education Committee. We are currently working on the advanced administrative topics seminar to be conducted on April 15, 2016, in Tallahassee, Florida. Jowanna Oates has kindly agreed to serve as program co-chair from the ALS. Russell Kent will serve as co-chair from the Government Law Section, and Ralph DeMado will serve as co-chair on behalf of the Environmental Land Use Law Section.

We are still searching for a chairperson and topics to conduct an ALS web series this year.

The Florida Bar CLE Committee has not met this year.



## Report from

# *The Florida Bar Board of Governors*

The Florida Bar Board of Governors met on December 4, 2015. The major actions of the Board and the reports received included:

The board unanimously voted that The Florida Bar opposes term limits for judges at any level of Florida's state court system. The position is in response to [pending legislation](#) for a constitutional amendment to impose term limits on Florida's appellate judiciary. The 2016 legislative session begins on Jan. 12. To review The Florida Bar's legislative positions, legislation of interest to the legal profession, weekly session updates, information about Bar advocacy and other links for those interested in the legislative process, please visit [www.floridabar.org/legislativeactivity](http://www.floridabar.org/legislativeactivity).

A recommendation by the [Code & Rules of Evidence Committee](#) was approved by a vote of 33 to 9 that the Supreme Court not adopt the amendments to *Florida Statutes* §90.702 and §90.704, as amended by Chapter 2013-107 (regarding the Daubert standard), as rules of evidentiary procedure to the extent they are procedural. All Florida Bar members and legal organizations were given the opportunity to provide feedback on the matter to the Board by Nov. 15 for review prior to the vote; all feedback and letters received are posted at [www.floridabar.org/daubertfrye](http://www.floridabar.org/daubertfrye) along with additional information including the board materials and the committee's reports. The Code & Rules of Evidence Committee submits three-year cycle reports with recommendations regarding procedural adoption of statutory substance amendments to the Code. The next cycle report is due to the Florida Supreme Court by Feb. 1, 2016. The Board of Governors receives and must vote on all matters prior to submission to the Supreme Court pursuant to [Florida Rule of Judicial Administration 2.140\(b\)](#).

President-elect William J. Schifino, Jr., announced that [committee preference forms are now available on the Bar's website](#) and must be submitted by Jan. 15. Florida Bar members are encouraged to request appointment to Bar committees to address the many challenges facing the legal profession. For more information on the process, the [December 1 Florida Bar News](#) includes details and instructions.

[The Florida Bar Wm. Reece Smith, Jr. Leadership Academy](#), a multi-session training program designed to assist a diverse and inclusive group of lawyers in becoming better leaders within the legal profession and their communities, is accepting applications for the 2016-17 class. Applications are due Jan. 15; information on the program and the application form are available online at [www.floridabar.org/leadershipacademy](http://www.floridabar.org/leadershipacademy).

The [Board Technology Committee](#) announced that a special issue of The Florida Bar *Journal* will be published in January focusing on technology's impact on the practice of law, and it will be available in an

online dynamic digital edition at [www.floridabar.org/journal](http://www.floridabar.org/journal) as well as in print. In this issue, a diverse group of authors covers a variety of subjects of interest and concern facing the profession relating to technology. The goal of the special issue is to awaken the thoughts of Florida lawyers to the changing landscape and to encourage using collective wisdom to guide the practice of law through the technological gauntlet.

A [proposed amendment to the Rules of Judicial Administration](#) was approved with joint amendments of appellate and criminal rules allowing limited representation in cases and defining who is the lead attorney in cases and how associate and covering attorneys can appear in and leave cases. Also approved were [proposed amendments to Family Law Rules](#) that would end all references to Civil Procedure Rules. The proposed amendments will be filed with the Florida Supreme Court. [Florida Rules of Court Procedure, proposed amendments, guidelines for rules submissions and rules of court procedure opinions are posted on the Bar's website.](#)

[A proposed amendment to Bar Rule 4-1.5](#) was approved on using lien modification attorneys at the end of a personal injury or wrongful death case to handle negotiations over health liens. Under the proposed amendment, which must be approved by the Florida Supreme Court, those attorneys could be hired in extraordinary cases with disclosure and written approval of the client and with a judge's approval. The judge would also be authorized to review and adjust the fees both of the main tort attorney and attorneys handling the liens.

#### **Important Links**

[The Florida Bar Board of Governors is seeking applicants for vacancies on The Florida Bar Foundation Board of Directors: Deadline Dec. 11](#)

[Judicial Nominating Commissions: One lawyer vacancy for each of the 26 JNCs to be nominated by The Florida Bar](#): Deadline for applications : Feb. 26

Make plans to attend The Florida Bar's [Winter Meeting](#), Jan. 21-23 at the Hilton Orlando Lake Buena Vista.

Be among the first to receive Florida Bar announcements and news on the legal profession and courts via social media:

[www.floridabar.org/socialmedia](http://www.floridabar.org/socialmedia)

*[Revised: 12-11-2015]*



## Report from

# The Florida Bar Board of Governors

The Florida Bar Board of Governors met on January 29, 2016. The major actions of the Board and reports received included:

President Ramón Abadin made a presentation on the challenges facing the legal profession and the changes technology has brought to the delivery of legal services. The Board discussed the presentation and the proper Bar response to member input regarding these challenges, and what the Bar can do to increase access to justice and help its members impacted by these challenges, particularly those in small firms. Private non-lawyer providers in the legal marketplace and options regarding these providers were also discussed. President Abadin, as well as several board members, said the Bar must act quickly on behalf of its members or it risks being left behind and perhaps eclipsed in the provision of legal services. Additional coverage of the presentation will be in the Feb. 15 issue of [The Florida Bar News](#).

Efforts to oppose a proposed constitutional amendment establishing term limits for appellate judges will continue until the 60-day legislative session ends. The Florida Bar [adopted a position to oppose term limits for any state court judges in Florida](#), either on the trial or appellate bench, during its Dec. 4 meeting after joint resolutions were introduced in the Florida House and Senate. The resolutions would limit appellate judges to no more than two appearances on the merit retention ballot, which, depending on when they were appointed, would give a maximum term of between 12 and 15 years. The legislative position was published in the Jan. 1, 2016, [Florida Bar News](#). A formal notice of the legislative position is published at [this link](#). According to the National Center for State Courts, no other state in the U.S. has term limits for state court appellate judges.

The [Board Review Committee on Professional Ethics](#) and the [Board Technology Committee's](#) joint efforts to study the future of the Bar's Lawyer Referral Service and to respond to the Supreme Court mandate to suggest rules prohibiting lawyers from belonging to for-profit referral services unless owned or operated by Bar members will be discussed in a preliminary report at the Board's March 11 meeting. The report will also address how the Bar should view private companies such as Avvo and LegalZoom as matching services for lawyers and clients versus referral services. The [Board Program Evaluation Committee](#) is also reviewing the Bar's Lawyer Referral Service and its report is also expected in March.

A proposed change to the comment to [Rule 4-4.2](#) addressing when lawyers can contact public officials who are represented by government attorneys was rejected by the [Board Review Committee on Professional Ethics](#), ending attempts by organizations affiliated with government lawyers to amend the rule or its comment. A special committee has been announced to include law school deans, the Florida Board of Bar Examiners, Supreme Court justices, and The Florida Bar to look at proposed changes to the certified legal intern rule and issues related to the Florida Bar Examination.

**From:** MAIL [[mailto:Ethics_Opinions@flabar.org](mailto:Ethics_Opinions@flabar.org)] **On Behalf Of** Ethics Opinions

**Sent:** Monday, February 01, 2016 9:49 AM

**Subject:** Rule Regulating The Florida Bar 4-4.2 - Proposed Amendments

The Board Review Committee on Professional Ethics met last Thursday, January 28, 2016. After having reviewed the proposed amendments and the comments on the proposed amendments, the committee heard from both proponents and opponents of the amendments. No committee member moved to approve the amendments, which therefore died for lack of a motion. The committee's chair reported on the matter to the board on Friday, January 29, 2016.

The matter is now concluded. If you have questions, please contact me.

Sincerely,

---

Elizabeth Clark Tarbert  
Ethics Counsel  
The Florida Bar  
651 E. Jefferson Street  
Tallahassee, Florida 32399-2300  
850/561-5780

**CITY, COUNTY AND LOCAL GOVERNMENT LAW SECTION  
GOVERNMENT LAWYERS SECTION  
FLORIDA ASSOCIATION OF COUNTY ATTORNEYS, INC.**

November 2, 2015

Board Review Committee on Professional Ethics  
Board of Bar Governors  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

Attn: Ms. Elizabeth Clark Tarbert  
Ethics Counsel

RE: New Proposed Amendments to Rule 4-4.2

Honorable Members of the Board:

On behalf of the City, County and Local Government Law Section, the Government Lawyers Section and the Florida Association of County Attorneys, Inc., I file the attached new proposed amendments to Rule 4-4.2. It is our understanding that the next possible time that this matter could be heard is the December 3, 2015 meeting of the BRC.

The proposed Amendments specifically address the one sentence in the Comment that, according to the statement of one member of the 1986 Special Study Committee on the Model Rules, Mr. Tom Ervin, had been left in the Comment in error. This one sentence was relied on by the Referee Judge in the disciplinary case styled The Florida Bar v. Tobin to find no violation of the “no contact” Rule 4-4.4 despite repeated admonitions by the government lawyers to stop communicating with the represented persons relating to matters in active civil litigation. Other substantive proposed amendments that had previously been offered by are withdrawn.

We had hoped to have collaboratively filed these proposed Amendments with the consent and approval of the Business Law Section and the Real Property, Probate & Trust Law Section. However, these Sections have not offered any Amendment to the Rule since the July meeting of the BRC.

Principally, the Amendments delete the one troublesome sentence previously referenced, and in its place add one sentence to provide clear guidance to attorneys who seek to communicate with the government. Simply stated, attorneys should not communicate with government officials and employees regarding a matter the lawyer knows has been referred to the government lawyer, including a matter in imminent or pending litigation or adversarial proceedings.

A Rule amendment is necessary to ensure the viability and efficacy of Rule 4-4.2 in the government context. The proposed Amendments are consistent with the guidelines of Formal Ethics Opinion 09-1 that was unanimously approved by the Board of Bar Governors in December 2010.

We urge you to approve these Rule Amendments and to submit them to the Florida Supreme Court for adoption. Thank you for your consideration of this important matter.

Very truly yours,

Marion J. Radson

On behalf of the City, County and Local Government Law Section, the Government Lawyers Section and the Florida Association of County Attorneys, Inc.

Attachment

/MR



RULE 4-4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

(a) In representing a client, a lawyer must not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. ~~Notwithstanding the foregoing~~ However, a lawyer may, without such prior consent, communicate with another's client to meet the requirements of any rule, statute or contract requiring notice or service of process directly on a person, in which event the communication is strictly restricted to that required by the court rule, statute, or contract, and a copy must be contemporaneously provided to the represented person's lawyer.

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule Regulating The Florida Bar 4-1.2 is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of the time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

**Comment**

This rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the lawyer-client relationship, and the uncounseled disclosure of information relating to the representation.

This rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

The rule applies even though the unrepresented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person, if, after commencing communication, the lawyer learns that the person is the one with whom communication is not permitted by this rule.

This rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matter outside the representation. For example, the existence of a controversy between a government agency and a private party, or between 2 organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. If a lawyer does not know whether the government agency, private person or organization is represented in a matter, the lawyer should make inquiry, and in

all instances, identify himself or herself as a lawyer who is representing a client. ~~Not~~ does this

This rule does not preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this rule through the acts of another. See rule 4-8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make, provided that the client is not used to indirectly violate the Rules of Professional Conduct. Also a lawyer having independent justification for communicating with the other party is permitted to do so as set forth in subdivision (a). ~~Permitted communications include, for example, the right of a lawyer who is a party to a controversy with a government agency to speak with government officials about the matter, or the right of a lawyer to speak with government officials about the matter. Permitted communications with a government agency do not include communications with government officials regarding a matter the lawyer knows has been referred to the government lawyer, including a matter in imminent or pending litigation or adversarial proceedings.~~

In the case of a represented organization, this rule prohibits communications with a constituent of the organization who supervises, directs, or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by the agent's or employee's own counsel, the consent by that counsel to a communication will be sufficient for purposes of this rule. Compare rule 4-3.4(f). In communication with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See rule 4-4.4.

The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See terminology. Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing the eye to the obvious.

In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to rule 4-4.3.

Code: Underlines and ~~cross-outs~~ are amendments to the current Rule.

## **BYLAWS OF THE ADMINISTRATIVE LAW SECTION**

### **ARTICLE I DESCRIPTION**

**Section 1. Name.** The name shall be "Administrative Law Section, The Florida Bar."

**Section 2. Purposes.** The purposes of this section are:

- (a) to provide an organization within The Florida Bar open to members thereof in good standing having an interest in administrative law and procedure on both the state and federal levels, and
- (b) to provide a forum for discussion and exchange of ideas leading to the improvement and development of the fields of administrative law and procedure and agency practice, and to serve the public generally and The Florida Bar in interpreting and carrying out the professional needs and objectives in these fields.

**Section 3. Aspirational Goal.** It is an aspirational goal to achieve fair balance between government attorneys and private practitioners among the executive council members of the section.

### **ARTICLE II MEMBERSHIP**

**Section 1. Eligibility.** Any member in good standing of The Florida Bar interested in the purposes of this section is eligible for membership upon application and payment of this section's annual dues. Any member who ceases to be a member of The Florida Bar in good standing shall no longer be a member of the section.

**Section 2. Administrative Year.** The administrative year of the section shall run concurrently with the administrative year of The Florida Bar.

**Section 3. Annual Dues.** The annual dues shall be the amount fixed by the executive council and approved by The Florida Bar. After an applicant has become a member, dues shall be payable in advance of each membership year and shall be billed by The Florida Bar at the time that regular dues of The Florida Bar are billed.

**Section 4. Affiliate Membership.**

(a) *Eligibility.* Any person who is not a member of The Florida Bar but who has an interest in administrative law and processes may become an affiliate member of the Administrative Law Section. Such persons may include but are not limited to members of administrative boards, agency staff, law students, legal assistants, members of the legislature and legislative staff, and other administrative personnel.

(b) *Privileges and Responsibilities.* Affiliates shall be members of this section only. Affiliates shall have all the privileges accorded to members of the section except that affiliates shall not be entitled to vote on any matter or to hold any section office. Affiliate members shall pay annual dues as determined by the executive council.

(c) *Membership Limits and Administrative Expenses.* The number of affiliate members shall not exceed one-third of the section membership. The section shall reimburse the bar for expenses incurred by the bar in administering this section's affiliate membership.

### **ARTICLE III OFFICERS**

**Section 1. Officers.** The officers of this section shall be a chair, a chair-elect, a secretary and a treasurer.

**Section 2. Duties of Officers.** The duties of the officers shall be as follows:

(a) *Chair.* The chair shall preside at all meetings of the section and at all meetings of the executive council. The chair shall appoint all committees and committee chairs with the approval of the executive council, be responsible for all reports to be submitted to The Florida Bar, and perform all duties as customarily pertain to the office of chair. The chair shall be an ex-officio member of each committee of the section.

(b) *Chair-elect.* The chair-elect shall become chair in the event of the death, resignation, or failure of the chair to serve for whatever reason; provided, however, that in the case of temporary disability or absence of the chair, the chair-elect shall serve as acting chair only for the duration of the chair's disability or absence. The chair-elect shall be responsible for such other duties as the chair may designate. The chair-elect shall be an ex-officio member of each committee of the section.

(c) *Secretary.* The secretary shall be responsible for all permanent files and records of the section, including the minutes of the meetings of the section and the executive council and all committee reports. The secretary shall keep accurate minutes of the proceedings of all meetings of the section and the executive council and shall furnish copies of said minutes to the executive director of The Florida Bar and to the section coordinator.

(d) *Treasurer.* The treasurer shall serve as liaison to The Florida Bar and other sections on matters involving section finances and shall have the responsibility of accounting for all funds of the section, shall approve all disbursements, shall prepare annual financial statements under the supervision of the executive council and shall prepare budget requests and amendments in a timely manner in accordance with the procedures of the budget committee of The Florida Bar.

**Section 3. Term of Office.**

(a) *Chair.* The term of office of the chair shall begin at the conclusion of the next annual meeting of the section after the chair was elected chair-elect and shall end at the

conclusion of the next succeeding annual meeting. Upon expiration of the chair's term, the chair shall be automatically succeeded by the chair-elect.

(b) *Other officers.* The terms of office of the other officers shall run concurrently with that of the chair.

**Section 4. Election of Officers.** The chair-elect, secretary and treasurer shall be elected by a plurality of the membership of the section in attendance at its annual meeting. Nominations shall be made by the nominating committee of the executive council and may be accepted from the floor.

**Section 5. Vacancies.** Any permanent vacancy occurring in an office shall be filled for the balance of the unexpired term by vote of the executive council at its next meeting.

## **ARTICLE IV EXECUTIVE COUNCIL**

**Section 1. Governing Body.** There shall be an executive council composed of 14 members of the section, plus the chair, chair-elect, immediate past chair, secretary, treasurer, and chair of the public utilities law committee, who shall be ex-officio voting council members. The executive council shall be the governing body of the section between the annual meetings of the section. The chair of the section shall be the chair of the executive council and the secretary of the section shall be the secretary of the executive council. It shall have general supervision and control of the affairs of the section, subject to the provision of the Rules Regulating The Florida Bar and the bylaws of this section. It shall authorize all commitments or contracts which entail the payment of money and it shall authorize the expenditures of all section funds. It shall not, however, authorize commitments, contracts or expenditures involving amounts of money in excess of the total amount which is anticipated as receipts from dues during the fiscal year plus the amount that has been previously collected from dues and remains unexpended. As the governing body of the section, it shall be vested with the power and authority to formulate, fix, determine and adopt matters of policy concerning the affairs and purposes of The Florida Bar. All recommendations of the section to The Florida Bar, any branch of the judiciary or to any other group or body to which recommendations by the section are authorized to be made, must first be approved by the executive council. Any recommendation made to other than The Florida Bar shall have the prior approval of The Florida Bar.

**Section 2. Term of Office.** All members of the executive council, excluding ex-officio voting council members, shall serve for a term of 2 years, the terms of the members being staggered so that 7 members shall take office at the conclusion of every other annual section meeting and shall serve until the conclusion of the annual meeting of the section 2 years thereafter, and 7 members shall take office at the conclusion of every other annual meeting and shall serve until the conclusion of the annual meeting of the section 2 years thereafter.

**Section 3. Election of Executive Council Members.** The members of the executive council to be elected each year for 2-year terms shall be elected by a plurality vote of the membership in attendance at the annual meeting of the section. Nominations shall be made by the executive council and may be accepted from the floor.

**Section 4. Vacancies.** Except as is otherwise provided herein, any permanent vacancy occurring in the membership of the executive council shall be filled for the balance of the expired term by vote of the executive council at its next meeting.

**Section 5. Duties.** In addition to attending meetings of the executive council and of the section, executive council members shall participate in at least 1 standing or ad hoc committee or serve as an executive council liaison to other Florida Bar committees or sections.

## **ARTICLE V MEETINGS**

### **Section 1. Meetings of the Membership.**

(a) The annual meeting of the section shall be held at each annual meeting of The Florida Bar. The active members of the section attending any meeting of the section shall constitute a quorum for the transaction of business and a majority vote of those present shall be binding.

(b) Special meetings of the entire membership of this section may be called by the executive council provided 30 days' notice thereof shall be given to each member of the section.

### **Section 2. Meetings of the Executive Council.**

(a) There shall be at least 3 meetings of the executive council each year, 1 of which shall be held in conjunction with the annual meeting of The Florida Bar.

(b) Regular meetings of the executive council shall be subject to call by the chair of the section upon 15 days' written notice to the members of the executive council.

(c) Special meetings of the executive council shall be subject to call by the chair of the section upon written notice that is reasonable under the circumstances. For a special meeting, the purpose of the meeting must be stated in the call of the chair and no vote may be taken on business other than that stated in the call.

(d) The executive council shall conduct its business at regular and special meetings as provided for in these bylaws; provided, however, the business of the executive council between regular meetings may be conducted by correspondence to the extent authorized by the chair.

(e) Those participating in a meeting or in transacting business by correspondence as authorized above shall constitute a quorum and majority vote of those participating shall be binding.

(f) In the event a member of the executive council is absent from any 2 regular meetings during the fiscal year, the member's office shall be deemed vacant, and such vacancy shall be filled as otherwise provided in these bylaws.

## ARTICLE VI COMMITTEES

**Section 1.** There shall be the following permanent, standing committees within the section:

(a) *Budget Committee.* The budget committee shall prepare and revise proposed budgets for submission to the executive council for approval. The budget committee shall be composed of the section chair, immediate past chair, chair-elect and treasurer.

(b) *Long Range Planning Committee.* The long range planning committee shall develop long-range goals for the section, review the present activities of the section and submit reports thereof and recommendations to the executive council for adoption. The long range planning committee shall be composed of the chair-elect of the section and such other persons as the chair may appoint.

(c) *Legislative Committee.* The legislative committee shall be composed of 3 members, appointed by the chair, who will also name the chair of the committee.

1) *Legislative Positions.* The legislative committee shall from time to time make recommendations to the executive council regarding requests for the section to adopt a legislative position. Such position shall require a 2/3 vote of the executive council to be adopted as the section position.

2) *Legislature in Session.* When the legislature is in session, the chair of the committee shall consult with the chair and, if available, the chair-elect of the section. The chair of the committee may then act upon pending or proposed legislation in accordance with section legislative positions if it is not reasonably possible or feasible for the executive council to act. The chair of the section shall notify all members of the executive council of such action taken as soon as it is reasonably possible to do so.

(d) *Publications Committee.* The publications committee shall be composed of the chair of the committee and 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 chair of the section will appoint the chair of the committee each year. The chair of the committee will appoint the editors for the section's publications, who will be responsible for the timeliness, quality, and contents of those publications.

(e) *Public Utilities Law Committee.* 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. Any member of the section may become a member of the committee by so notifying the chair of the committee in writing. The committee may present at least 1 CLE program which receives Bar approval for CLE credits each year. All CLE presentations must be approved by the executive council. The committee shall also be provided space in the section's newsletter featuring the committee's own column for matters of special interest to its members.

(f) *Law School Outreach Committee.* The law school outreach committee shall be composed of members appointed by the chair. The committee shall coordinate 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.

(g) *Nominating Committee.* There shall be a nominating committee composed of 3 executive council members appointed by the chair to determine and propose a slate of candidates for any vacancy which occurs either during an executive council member's term or at the conclusion of any executive council member's term. For any executive council member seeking re-appointment at the expiration of that member's term, consideration for re-appointment will be based upon that member's contributions to the executive council during the term that is about to expire.

**Section 2. Ad Hoc Committees.** The chair shall establish ad hoc committees from time to time as the need arises.

## **ARTICLE VII MISCELLANEOUS**

**Section 1. Action of The Florida Bar.** No action of the section shall be represented or construed as the action of The Florida Bar until the same has been approved by The Florida Bar.

**Section 2.** No member of the section nor any committee thereof shall take any action or espouse any position as being the action or position of the section except as otherwise provided in these bylaws.

**Section 3. Financial Obligations.** Before payment, all financial obligations must first be approved in the manner specified by the executive council.

**Section 4. Compensation and Expenses.** No salary or other compensation shall be paid to any member of the section for performance of services to the section but the chair may authorize the payment of reasonable out-of-pocket expenses resulting from performance of such services.

**Section 5. Amendments.** These bylaws may be amended only by The Florida Bar upon recommendation made by the executive council of the section.

**Section 6.** No action of this section shall be contrary to the policies of The Florida Bar.

**CHAIR:**

Richard J. Shoop  
AHCA  
2727 Mahan Dr., MS #3  
Tallahassee, FL 32308-5407  
(850)412-3630

**CHAIR-ELECT:**

Jowanna N. Oates  
Joint Administrative Procedures Committee  
680 Pepper Bldg.  
111 W. Madison St.  
Tallahassee, FL 32399-1400  
(850)488-9110

**TREASURER:**

Garnett W. Chisenhall, Jr.  
Division of Administrative Hearings  
1230 Apalachee Pkwy.  
Tallahassee, FL 32399  
(850)488-9675

**SECRETARY:**

Robert H. Hosay  
Foley & Lardner, LLP  
106 E. College Ave., Ste. 900  
Tallahassee, FL 32301  
(850)222-6100

---

## Administrative Law Section

---

**IMMEDIATE PAST CHAIR:**

Daniel E. Nordby  
215 S. Monroe St., Ste. 804  
Tallahassee, FL 32301-1858  
(850)521-0600

**BOARD LIAISON:**

Lawrence E. Sellers, Jr.  
P.O. Box 810  
Tallahassee, FL 32302-0810  
(850)425-5671

**P.U.L.C. CHAIR:**

Michael G. Cooke  
625 E. Twiggs St., Ste. 100  
Tampa, FL 33602-3925  
(813)318-5700

### Administrative Law Section Executive Council Long Range Planning Retreat March 18, 2016

**Hotel Duval**  
**415 North Monroe Street**  
**Tallahassee, Florida**

**EXECUTIVE COUNCIL:****Terms Expiring 2017:**

Frederick R. Dudley  
Tallahassee  
Stephen C. Emmanuel  
Tallahassee  
Clark R. Jennings  
Tallahassee  
Bruce D. Lamb  
Tampa  
Patricia A. Nelson  
Tallahassee  
Brian A. Newman  
Tallahassee  
Christina Shideler  
Tallahassee

**Terms Expiring 2016:**

J. Andrew Bertron, Jr.  
Tallahassee  
Francine M. Folkes  
Tallahassee  
Brent McNeal  
Tallahassee  
Frederick J. Springer  
Tallahassee  
Lynne A. Quimby-Pennock  
Tallahassee  
Suzanne Van Wyk  
Tallahassee  
Amy Schrader  
Tallahassee

**SECTION ADMINISTRATOR:**

Calbrail L. Bennett  
651 E. Jefferson St.  
Tallahassee, FL 32399-2300  
(850)561-5623  
Fax: (850) 561-9427  
cbennett@flabar.org

- I. Call to Order Jowanna N. Oates, Chair-Elect
- II. Adoption of Agenda
- III. Long Range Planning
  - A. Ideas/Suggestions for Increasing Section Membership
  - B. Ideas/Suggestions for Increasing Attendance at the Pat Dore Conference and Participation in the Webinar Series
  - C. Continuation of the Section Service Project
  - D. Publications
- IV. Miscellaneous
- V. Adjournment