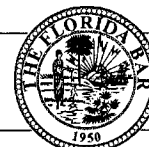




# Administrative Law Section

**CHAIR:**

Elizabeth W. McArthur  
P.O. Box 10967  
Tallahassee, FL 32302-2967  
(850)425-6654

**CHAIR-ELECT:**

Seann M. Frazier  
101 E. College Ave.  
Tallahassee, FL 32301-7742  
(850)222-6891

**SECRETARY:**

Cathy M. Sellers  
215 S. Monroe St., Ste. 400  
Tallahassee, FL 32301-7742  
(850)681-6810

**TREASURER:**

Allen R. Grossman  
1408 N. Piedmont Way  
Tallahassee, FL 32308  
(850)385-1314

**IMMEDIATE PAST CHAIR:**

Andy Bertron  
3600 Maclay Blvd. S., Ste. 202  
Tallahassee, FL 32312-1267  
(850)907-2507

**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  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-7019  
(850)413-6199

**EXECUTIVE COUNCIL:****Terms Expiring 2009:**

Paul H. Amundsen  
Tallahassee

Donna E. Blanton  
Tallahassee

Lisa S. Nelson  
Tallahassee

Daniel E. Nordby  
Tallahassee

Linda M. Rigot  
Tallahassee

W. David Watkins  
Tallahassee

William E. Williams  
Tallahassee

**Terms Expiring 2010:**

F. Scott Boyd  
Tallahassee

Clark R. Jennings  
Tallahassee

Deborah K. Kearney  
Tallahassee

Bruce D. Lamb  
Tampa

Wellington H. Meffert  
Tallahassee

Shaw P. Stiller  
Tallahassee

T. Kent Wetherell, II  
Tallahassee

**SECTION ADMINISTRATOR:**

Jackie Wermli  
651 E. Jefferson St.  
Tallahassee, FL 32399-2300  
(850)561-5623

**Administrative Law Section Executive Council****June 26, 2009****Marriott World Center, Orlando****AGENDA**

- I. CALL TO ORDER – Elizabeth W. McArthur, Chair
- II. PRELIMINARY MATTERS
  - A. Consideration of Minutes
    - 1. March 19, 2009
    - 2. March 20, 2009 (LRP Retreat)
  - B. Treasurer's Report – Allen R. Grossman
    - 1. 6/15/09 Detail Statement of Operations
  - C. Chair's Report – Elizabeth W. McArthur
    - 1. Bar CLE Committee – Request for Response
- III. COMMITTEE/LIAISON REPORTS
  - A. Continuing Legal Education – Bruce D. Lamb
  - B. Publications – Deborah K. Kearney
    - 1. Newsletter – Donna E. Blanton/Amy W. Schrader
      - a. Agency Snapshots – Wellington H. Meffert
    - 2. TFB *Journal* – Deborah K. Kearney
  - C. Legislative – William E. Williams /Linda M. Rigot/Andy Bertron
  - D. Public Utilities Law – Michael G. Cooke
  - E. Membership – W. David Watkins
  - F. Webpage – Daniel E. Nordby
  - G. Board of Governors Liaison – Lawrence E. Sellers, Jr.
  - H. Law School Liaison – T. Kent Wetherell, II
  - I. CLE Committee Liaison – Cathy M. Sellers
  - J. Council of Sections – Seann M. Frazier
  - K. Section/Division Liaison
    - 1. Environmental and Land Use Law – Shaw P. Stiller
    - 2. Health Law – Allen R. Grossman
    - 3. YLD Liaison – Christine D. Graves
  - L. DOAH Update – Lisa S. Nelson/Linda M. Rigot/T. Kent Wetherell, II
  - M. APD Volunteer Program Ad Hoc Committee – Andy Bertron
  - N. Ad Hoc – Ex Officio Designation of Past Section Chairs – Linda M. Rigot/Deborah K. Kearney/Daniel E. Nordby

IV. OLD BUSINESS

V. NEW BUSINESS

- A. Section Officer/Executive Council Election
  - 1. Nominating Committee Recommendations
- B. Section Website Redesign/Hosting

VI. INFORMATIONAL

- A. Executive Council List
- B. 2008-09 Committee List
- C. Legislative Positions

VII. FINAL REMARKS & PRESENTATION OF AWARDS — Outgoing Chair

VIII. PROGRAM OUTLINE & CLOSING COMMENTS — Incoming Chair

IX. TIME AND PLACE OF NEXT MEETING  
Fall 2009 – Tallahassee

X. ADJOURNMENT

Administrative Law Section Executive Council  
March 19, 2009  
Wakulla Springs Lodge

I. CALL TO ORDER - Elizabeth McArthur, Chair

Members Present: Elizabeth McArthur, Seann Frazier, Cathy Sellers, Andy Bertron, Larry Sellers, Michael Cooke, Donna Blanton, Scott Boyd, Clark Jennings, Debby Kearney, Bruce Lamb, Wellington Meffert, Judge Li Nelson, Daniel Nordby, Judge Linda Rigot, Dave Watkins, Judge Kent Wetherell, Bill Williams.

Members Absent: Paul Amundsen, Allen Grossman, Shaw Stiller

Others Present: Amy Schrader, Chrissy Davis, Terry Harmon

II. PRELIMINARY MATTERS

A. Consideration of Minutes

The minutes for the September 23, 2008 meeting were adopted. The minutes for the January 20, 2009 conference call meeting on the budget were corrected to show Clark Jennings as present, and were adopted with that correction.

B. Treasurer's Report

Jackie Werndli gave the Treasurer's Report. The Section's revenues are ahead of, and expenses are lower than, what has been budgeted. The current fund balance is \$190,935.00 and the budgeted fund balance is \$185,129.00. Seann Frazier asked whether the Section would experience a loss for this fiscal year. Jackie said she would check and report on that.

C. Chair's Report

1. Draft Advisory Opinion

Elizabeth McArthur reported on the status of a draft advisory opinion that has been sought regarding Rule 4-4.2 of the Rules of Professional Conduct, governing communications with persons represented by counsel. Specifically, the question asked was whether Rule 4-4.2 prohibits a law firm from directly communicating with employees of a state agency, when such communications do not pertain to any adversarial proceeding between the firm's clients and state agency. A draft opinion was circulated at the Professional Ethics Committee January 2009 meeting and discussed. Elizabeth had sent this draft opinion to executive council members by email before the January PEC meeting, and the few who commented were generally in favor of the draft, and would consider supporting it if the PEC adopted the draft as its proposed opinion. However, the Committee requested that changes be made to the draft. The PEC will consider the matter

at its June 2009 Bar Convention meeting. As a point of information, the Environmental and Land Use Law Section Executive Council determined that Section would not take a position because the issue is divisive.

2. Board of Governors Meeting, January 30, 2009

Elizabeth attended the Board of Governor's meeting on January 30, 2009, where she presented a report on the Administrative Law Section's activities.

3. Pro Bono Representation before DOAH of Persons Whose Substantial Interests are Determined by the APD

Elizabeth encouraged Executive Council Members to contact attorneys to volunteer to represent persons whose substantial interests are determined by the Agency for Persons with Disabilities ("APD") in proceedings before the Division of Administrative Hearings ("DOAH"), particularly attorneys in South Florida. Elizabeth has a case she will be working on, and will report to the Council on it.

4. Continuing Legal Education

Elizabeth expressed concern about the attendance at last fall's Pat Dore Conference and expressed the need to market the materials for the Conference. There also was discussion regarding the need to provide CLE in alternative forms, such as webinars, that are accessible to Section members without having to travel.

5. Nominating Committee

The Nominating Committee was set in order to nominate the next panel of officers and council members. The Committee consists of Elizabeth McArthur, Judge Linda Rigot, and Judge Kent Wetherell. There was discussion regarding reviewing currently serving Executive Council members' activities to determine whether they should be reappointed to the Council.

III. COMMITTEE/LIAISON REPORTS

A. Continuing Legal Education Committee

Bruce Lamb gave the CLE Committee Report. Bruce reiterated the need for the Section to offer alternative forms of CLE, including videoconferences and webinars, offering discrete topics covered in short timeframes, in order to attract participation by persons around the state and those who do not have the ability to devote an entire day or more to attending a CLE seminar. Topics, locations, and format for future CLE courses were discussed. Bruce noted the need for the Section to maintain CLE course offerings for board certified attorneys, who will need administrative law CLE for recertification.

The Bar cancelled the State and Federal Governmental and Administrative Practice ("SFGAP") Certification Review Course due to low registration. However, the CLE Committee is using the materials and topics prepared for the SFGAP course to offer a course on State Government and Administrative Practice. The course tentatively is scheduled for June 11, 2009, in Tallahassee.

Jackie noted that the Bar approved extension of validity period for the 2008 State and Federal Governmental and Administrative Practice Certification Review Course, for an additional 18 months, so the Section will get after-market sales of those materials.

B. Publications Committee

i. Florida Bar Journal -- Debby Kearney said that articles are needed for the Florida Bar Journal.

ii. Newsletter -- Donna Blanton reported that the next newsletter will be out in June. Larry Sellers is doing an article on the 2009 Amendments to the Florida Administrative Procedure Act. Cathy Sellers will be doing an Agency Snapshot. Mary Smallwood's Case Law Update also will be included. Debby Kearney suggested that an article on the Small Business Regulatory Advisory Council created in 2008 may be a good topic for a lead article in a future Newsletter issue, since little seems to be known about the Council. Fred Dudley is a member of the Council; it was suggested that he be contacted regarding writing the article.

C. Legislative Committee

Judge Rigot provided an extensive report regarding numerous bills pending before the Legislature that would amend the APA or affect APA or DOAH proceedings. Judge Rigot also is providing frequent updates on the bills' progress throughout the Session.

There was discussion about whether the Section should take a position on a bill (HB 935) that would make Area Agencies on Aging no longer subject to procurement challenge procedures under Section 120.57(3), Florida Statutes. The Executive Council ultimately determined that the Section should not take a position.

There also was discussion regarding a bill (HB 1007) which would relieve the Florida Commission on Human Rights ("FCHR") from being responsible for recordation of proceedings that it refers to DOAH when FCHR is not a party. Concern was expressed that passage of this bill would set precedent for other agencies to seek the same relief. Judge Wetherell noted that the bill's subject is within the scope of the Section's Bar-approved position to oppose legislation that would undermine rights afforded under Chapter 120. On motion by Donna Blanton, the Executive Council approved the Section's active opposition to this bill. Scott Boyd abstained from voting.

D. Board of Governors Liaison

Larry Sellers gave the Board of Governors ("BOG") Report and included a detailed version of the Report in the meeting materials. Highlights included:

- \* No annual dues increase is likely.
- \* The BOG approved the Family Law Section's request for approval to file an amicus brief in the Third District Court of Appeal, supporting a circuit court ruling striking the state law banning homosexual couples from adopting children. Larry explained that the Sections' authority to take such positions is broad; Sections may take positions as long as they are consistent with the Section's Bar-approved position on the particular topic.
- \* Discussion of judiciary branch funding, which is a significant Legislative issue this year.
- \* The Florida Supreme Court turned down a request to "clarify" that lawyer-to-lawyer advertising is not subject to the Bar's rules on lawyer advertising.
- \* A brief discussion of the advisory opinion that has been requested regarding Rule 4-4.2, in connection with communications by attorneys with state agency staff regarding non-adversarial matters.

E. Public Utilities Committee

Michael Cooke reported that the Committee had considered scheduling a CLE program for January 2009, and now is looking at a September 2009 program on practice before the PSC and telecommunications issues.

F. Membership Committee

Dave Watkins reported that the Section now has 1,292 attorney members and 12 affiliate members.

G. Website Committee

Dan Nordby reported that he received three proposals for redesign of the Section's webpage. The prices quoted ranged from \$3000 to \$10,175 for a range of capabilities. Dan is seeking input from the Executive Council as to the specific features and capabilities the Council believes should be provided on the website. After discussion, it was decided that Dan is going to gather additional information regarding the specific capabilities available and the specific costs, and will provide that information for discussion at the Council's Bar Convention meeting.

H. Law School Liaison Committee

Judge Kent Wetherell described the Committee's current activities, which include providing information to the Florida law schools so that they can integrate administrative hearings into their course offerings or conduct hearings at the schools, and hosting guest

speakers on administrative law topics at the law schools. Judge Wetherell has spoken at the University of Florida College of Law and at the Florida Coastal School of Law. Otherwise, there has not been much response from the law schools. Judge Wetherell suggested the Council may wish to explore new directions regarding the Committee's activities. This will be further discussed at the Long Range Planning Retreat.

I. Council of Sections

Seann Frazier provided the report on the Council of Sections. Many Sections are experiencing declines in Section membership, so we are in comparatively good shape regarding membership.

J. Environmental and Land Use Law Section Liaison

Jackie Werndli gave the ELULS Liaison report. That Section's long range planning retreat will be held in May, in Las Vegas. The ELULS law school liaison committee also is experiencing lack of participation by law students in that committee's activities.

K. Young Lawyers Division Liaison

Chrissy Davis reported that the Young Lawyers Division is considering an amendment to the rule regarding basic level courses, to allow attorneys to view courses online so that actual presence at a live course presentation is not necessary. The Basic Administrative Law course will be offered in April 2010, and currently is scheduled to be conducted in Tampa or Miami.

L. DOAH Update

Judge Linda Rigot provided the DOAH Update report. Judge Lisa Nelson is the new head judge for DOAH's Northern District. Judge Charles Adams has retired. Two more agencies, the Department of Agriculture and Consumer Services and the Department of Highway Safety & Motor Vehicles, are sending their final orders to DOAH.

M. APD Volunteer Program Ad Hoc Committee

Andy Bertron gave the update on the APD Volunteer Program Committee's activities. A second seminar on procedural issues, following up the substantive issues seminar, was held at FSU. Additionally, a second article regarding the Committee's activities was published in the Florida Bar News, and materials from the two seminars have been posted on the Administrative Law Section and Florida Legal Services websites. Andy said that no additional seminars are planned at this time. To date, twenty-nine (29) volunteers have signed up through the Florida Legal Services website, and the most useful efforts would be directed at getting more volunteers involved.

Andy discussed issues in getting more attorneys involved. Specifically, the confidentiality waiver support coordinator is a private contractor (a social caseworker) who does not feel comfortable waiving confidentiality, even when attorneys are representing the clients, unless the client signs a confidentiality waiver. The Council discussed ways to address this issue. Andy also reported a very active advocacy network that has been formed to work on a range of issues, including rule challenges, class action law suits, and amendments to Chapter 120. The Administrative Law Section is not part of this network.

#### IV. OLD BUSINESS

##### A. Proposed Revisions to Appellate Rules

Judge Rigot provided a status report on the amendments to the state citation rules. The Appellate Rules Committee has approved the amendments. She also discussed amendments to the rules regarding the record for appeals of emergency suspension orders and immediate final orders. Judges Wetherell, Nelson, and Rigot, Donna Blanton, and Daniel Nordby have been working as an ad hoc committee on the amendments. The ad hoc committee is revising the proposed amendments and will present them to the Executive Council for approval before sending them on to the Appellate Rules Committee. They will be provided to the Council before the Council's June 2009 Bar Convention meeting.

#### V. NEW BUSINESS

No new business was discussed.

#### VI. INFORMATIONAL

The 2008-2009 Executive Council members and contact information list, 2008-2009 committees and liaison assignments list, and Legislative positions list were distributed.

#### VII. TIME AND PLACE OF NEXT MEETING

The Executive Council's next meeting is scheduled for June 26, 2009, at the Orlando World Center Marriott.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cathy M. Sellers  
Secretary



ADMINISTRATIVE LAW SECTION  
EXECUTIVE COUNCIL  
LONG RANGE PLANNING RETREAT

March 20, 2009  
Wakulla Springs Lodge

The Executive Council of the Administrative Law Section ("ALS") held a Long Range Planning Retreat ("LRPR") on March 20, 2009, at the Wakulla Springs Lodge.

Present: Scott Boyd, Clark Jennings, Seann Frazier, Debby Kearney, Bruce Lamb, Elizabeth McArthur, Dan Nordby, Linda Rigot, Cathy Sellers, Dave Watkins, Kent Wetherell.

Absent: Allen Grossman, Andy Bertron, Michael Cooke, Paul Amundsen, Bill Williams, Wellington Meffert, Shaw Stiller.

The following topics were addressed.

I. Ex Officio Designation of Past Section Chairs

Topic: Should Immediate Past Chairs of the Section be ex-officio members of the Executive Council? This would create more openings, assuming that immediate past chairs would otherwise want to come back on the council as a regular executive council member as has often been the case in the past. The purpose would be to invigorate the Council and get fresh ideas and balance agency and private practice interests on the Council.

Discussion:

Debby Kearney spoke in favor, on the basis it would bring new membership and fresh ideas to the Council. Judge Rigot opposed the idea on the basis that there is not a need, since there is not competition for Council seats, and because the Immediate Past Chair is on the Council for a year following his or her term as Chair and then goes off the Council. Judge Wetherell and Seann Frazier suggested that a compromise would be to give Past Chairs the option of remaining on the Executive Council as ex-officio voting members and having them find a replacement for themselves before they go off the Council.

There was discussion on how to keep Past Chairs and Council members who want to, to remain involved in the Council's activities, and a review of how some other Sections handled this issue. One suggestion was to invite all Past Chairs to the Section's LRPR to gain the benefit of their institutional knowledge and experience regarding specific projects, while avoiding some of the complications associated with voting rights and quorum issues.

Seann suggested that the Council form an ad hoc committee to explore the idea of having Past Chairs as ex-officio members of the Executive Council. The ad hoc committee will consist of Judge Rigot, Debby Kearney, and Dan Nordby. He also suggested that the Council invite Past Chairs to the Section's LRPR.

## II. Mediation

Topic: Section 120.573, Florida Statutes, provides for the mediation of disputes. The law currently allows for mediation when the agency and all parties agree to participate. However, the process is not often used. Can/should the Executive Council do anything to encourage the use of mediation?

### Discussion:

Judge Wetherell noted that this is an issue of agency policy, so it may require getting the Governor's Office to encourage agencies to use mediation. He further noted that there was a DOAH pilot project several ago, comparing settlement rates of cases that went to mediation and those that did not, and that the settlement rate was no greater for cases that were mediated. Later, the Florida Conflict Resolution Consortium at FSU pushed to have Section 120.573 enacted as a means of attracting business to the Consortium - not because there was a need or call for more mediation.

Ultimately, it was decided that the Council cannot do anything to further the forcing of parties to go to mediation, but perhaps we could amend our bylaws to state that the Section encourages parties to consider mediation.

## III. Continuing Legal Education

Topic: CLE courses and materials have been a traditional source of funding for the Section. However, current economic conditions may limit attendance at seminars. Should the Section review its current schedule of CLE offerings and increase the number of programs? Should the Section commit to new types of programs, such as one-hour telephonic seminars?

### Discussion:

The Section holds the Pat Dore Conference every other year, and in the alternating years holds the Practice Before DOAH seminar.

The Young Lawyers Division ("YLD") holds the Basic Administrative Law seminar every three years, with video replays offered in ten cities. The ALS may wish to encourage the YLD to host replays for smaller groups every other year. Currently the YLD gets all of the registration fees for the Basic Administrative Law seminar, but it is still a good way to generate interest among young lawyers in our practice area and our Section.

Bruce Lamb suggested having the State and Federal Governmental and Administrative Law Practice ("SFGAP") certification review course structured so that all Florida practice topics are covered on one day and all federal topics are covered on the other day, with a registration fee differential between the full course and the only Florida/only federal portions of the course. This may attract participants interested in a more targeted, less expensive alternative to attending the full SFGAP review course, and may serve to boost attendance at the course. This suggestion was favorably received.

There also was discussion regarding hosting "lunch and learn" type seminars similar to those offered by the Government Bar Section. Jackie Werndli stated that due to technology costs, \$40 is the lowest registration fee we could charge. She noted that the live programs, such as those offered by the Florida Government Bar Association, charge lower fees but they only break even. She stated that the Environmental and Land Use Law Section is raising dues by \$5 and offering six one-hour CLE courses for free. However, the ALS does not wish to raise its dues so this model will not work for this Section. Jackie noted that Terry Hill has stated that Bar will work with the Sections (like ours) that have high agency membership, regarding CLE fee structure. Judge Rigot suggested hosting "Brown Bag" lunches with speakers on administrative law topics and charging an admission fee.

Bruce Lamb suggested that the Section conduct telephonic CLE programs, which would entail a specified connection fee for one connection, with a lower attendance fee for others attending the program via that connection. After discussion, it was agreed that the CLE Committee will look into conducting a one-hour telephonic CLE program on Ethics and Professionalism in late August of this year.

Clark Jennings and Debby Kearney suggested that the Section consider sponsoring a course on administrative law topics for agency non-legal staff, which will serve the dual purpose of providing useful information to agency staff and marketing the Section to potential affiliate members.

Seann Frazier will work with the CLE Committee to schedule the Ethics and Professionalism telephonic CLE program and the program for non-attorney agency staff.

#### IV. Section Website

Topic: What, if anything, should be done to improve the usefulness and appearance of the ALS website?

Dan Nordby stated that we need to know what functions and features the Section members want on the website. He noted that the website technology needs to be updated, and we have received three proposals ranging from \$3000.00 to \$10,000.00, depending on the functions and capabilities provided. This would be a one-time expense to upgrade the website. It was suggested that we would want to invest in a system that we would be able to update ourselves. The website was budgeted for \$3,000 of expenses. Jackie

Werndli will get Dan a copy of the list of website vendors used by the Environmental and Land Use Law, Appellate, Health Care, and other Sections.

The following were discussed regarding updating and upgrading the website's content:

- \* Providing archived copies of old newsletters, back as far as the 1970s, on the website.
- \* Making agency snapshots more easily accessible on the website.
- \* Providing a directory of agency general counsels on the website.
- \* Posting the Section Membership List (this is on the website but it is not current).
- \* Providing a link to the Bar's SFGAP page and certified attorneys list.
- \* Adding the Executive Council meeting minutes to the website.
- \* Adding links to the Joint Administrative Procedures Committee website, Florida Rules website, Uniform Rules of Procedure, and Division of Administrative Hearings website.
- \* Posting key administrative law cases in a case law database on the website.
- \* Posting APA legislation and bills on the website.

V. Law School Liaison

Topic: Are there additional measures the Executive Council can take to increase law school participation in the Law School Liaison activities and attract students and young lawyers to administrative law?

Discussion:

There was an extended discussion regarding ways to encourage law student interest in administrative law and participation in ALS-sponsored activities at the law schools. It was agreed that since law students are extremely busy and many activities compete for their time and interest, it is imperative to integrate our liaison activities into what the law schools and students are already doing, such as providing course speakers on discrete topics in administrative law. It was also suggested that law school deans and law school placement offices should be made aware of the need to train students in administrative law for job placement purposes.

The Administrative Law Section 2009 Long Range Planning Retreat was then adjourned.

Respectfully submitted,

Cathy M. Sellers  
Secretary

	May 2009 Actuals	YTD 08-09 Actuals	Budget	Percent Budget
Total Administrative Law				
31431 Section Dues	0	28,293	29,190	96.93
31432 Affiliate Dues	0	300	100	300.00
31433 Admin Fee to TFB	0	(20,788)	(20,555)	101.13
	-----	-----	-----	-----
Total Dues Income-Net	0	7,805	8,735	89.35
	-----	-----	-----	-----
32191 CLE Courses	(606)	6,250	9,000	69.44
32293 Section Differential	217	3,776	1,875	201.39
35700 Member Service Progr	0	0	5,000	0.00
38499 Investment Allocatio	0	(24,827)	13,379	(185.57)
39999 Miscellaneous	0	0	150	0.00
	-----	-----	-----	-----
Other Income	(389)	(14,801)	29,404	(50.34)
	-----	-----	-----	-----
Total Revenues	(389)	(6,996)	38,139	(18.34)
	-----	-----	-----	-----
51101 Employee Travel	0	0	1,341	0.00
71005 Internet Charges	34	68	0	*
84001 Postage	0	43	175	24.57
84002 Printing	0	112	120	93.33
'003 Officers Office Expe	0	0	500	0.00
.006 Newsletter	0	5,688	5,400	105.33
84007 Membership	0	0	500	0.00
84009 Supplies	0	0	50	0.00
84010 Photocopying	0	61	150	40.67
84051 Officers Travel Expe	0	0	2,500	0.00
84052 Meeting Travel Expen	0	0	3,000	0.00
84054 CLE Speaker Expense	0	0	100	0.00
84101 Committee Expenses	0	0	500	0.00
84201 Board Or Council Mee	0	290	600	48.33
84202 Annual Meeting	0	0	2,400	0.00
84205 Section Service Prog	0	199	5,000	3.98
84209 Retreat	0	974	4,500	21.64
84299 Public Utility Comm	0	0	500	0.00
84301 Awards	793	793	600	132.17
84310 Law School Liaison	0	0	4,900	0.00
84422 Website	0	235	3,000	7.83
84501 Legislative Consulta	0	0	5,000	0.00
84701 Council Of Sections	0	0	300	0.00
84998 Operating Reserve	0	0	4,422	0.00
84999 Miscellaneous	0	271	500	54.20
	-----	-----	-----	-----
Total Operating Expenses	827	8,734	46,058	18.96
	-----	-----	-----	-----
86431 Meetings Administrat	0	0	32	0.00
86543 Graphics & Art	170	1,996	2,554	78.15
	-----	-----	-----	-----
Total TFB Support Services	170	1,996	2,586	77.18
	-----	-----	-----	-----

II B 1 (1)

Report : 1 of 1  
Program : YAZAPFR  
User id : THARLEY

Unaudited Detail Statement of Operations

Page : 5  
Date : 6/15/09  
Time : 11:27:57

	May 2009 Actuals	YTD 08-09 Actuals	Budget	Percent Budget
Total Administrative Law	-----	-----	-----	-----
Total Expenses	997	10,730	48,644	22.06
	-----	-----	-----	-----
Net Operations	(1,386)	(17,726)	(10,505)	168.74
	-----	-----	-----	-----
21001 Fund Balance	0	209,058	191,134	109.38
	-----	-----	-----	-----
Total Current Fund Balance	(1,386)	191,332	180,629	105.93
	-----	-----	-----	-----

II B1(2)



Elizabeth McArthur  
<emcarthur@radeylaw.com>

06/12/2009 04:56 PM

To Terry L Hill <THill@flabar.org>

cc "FrazierS@gtlaw.com" <FrazierS@gtlaw.com>, "Lamb,  
Bruce" <Bruce.Lamb@ruden.com>,  
"csellers@broadandcassel.com"

bcc

Subject RE: Administrative Law Section Response: Florida Bar CLE  
Committee Agenda Item - Potential Impact on Bar Sections

Dear Mr. Hill:

Thank you so much for soliciting our input on the subject of the Bar CLE Committee's consideration of a possible financial hardship fee waiver policy for Section/Bar CLE program attendance. After discussing this with our Section's Chair-Elect (Seann Frazier), we shared your email not only with the Section's CLE Chair (Bruce Lamb) and liaison to the Bar CLE Committee (Cathy Sellers), but also, with all other members of the Administrative Law Section Executive Council. We thought this was important because we strive to maintain a balance of private and public-sector attorneys on our Executive Council and wanted to ensure that same balanced perspective in responding to you.

The Administrative Law Section is uniquely positioned for several reasons to be disproportionately adversely affected if the sort of policy you describe were adopted by the Bar CLE Committee and imposed as a mandate on all of the Sections. First, as you point out, we are one of those Sections whose likely CLE audience would be more heavily weighted with government lawyers. Second, the subject matter that is our Section's focal point does not lend itself to a high volume of CLE programs. Still, we strongly believe that one of our most important missions as a Section is to develop the highest-caliber CLE programs and to make those programs available to all of our members (and non-members) at the lowest possible fees.

For the same reasons that probably bring this issue to the attention of the Bar CLE Committee, we too have listened carefully to the concerns raised that even with our low fees for CLE programs, economic conditions and budget cuts over the last few years make it increasingly difficult for public-sector lawyers to afford our programs. To address these concerns, we voted last year to give a discount to government lawyers registering to attend our popular Pat Dore Administrative Law Conference, and private attorneys actually were charged a slightly higher fee than we originally contemplated to cross-subsidize for the discount, since overall we had our fee set as low as possible to cover anticipated costs.

We believe that similar efforts can and will continue so long as our Section retains the ability to develop fee structures that we determine are most appropriate for our CLE programs. We need the ability and the flexibility to adapt as circumstances evolve. We are in an adjustment phase, trying to get used to decreasing revenues (with new revenue sharing), increasing expenses (with new expense allocations), AND dropping CLE attendance. Our Section budget is in the red, and the reserves we had previously built up are rapidly disappearing. If on top of this new budget reality, a CLE program fee waiver mandate were imposed on our Section, we could be forced out of the CLE business entirely. We have grave concerns that any effort to formulate a uniform

II C 1(1)

policy that would be mandated on all Sections would backfire for these reasons (without even getting into the obvious difficulties in defining the parameters of any such policy – such as how to define “underemployed,” much less police it).

We oppose any effort by the Bar’s CLE Committee to develop a uniform policy on CLE program fee waivers, and instead, urge the Committee to allow individual Sections to develop their own policies on the subject of any CLE fee waivers or discounts. Individual Sections, like ours, can and will provide solutions to address the concerns of CLE program accessibility and affordability – but we have to be able to come up with solutions tailored to balance our own unique competing circumstances.

Thank you again for seeking out our views.

Sincerely,

Elizabeth McArthur  
Chair, Administrative Law Section

**From:** Terry L Hill [mailto:THill@flabar.org]  
**Sent:** Wednesday, June 10, 2009 10:52 AM  
**To:** Section Chairs 2008-2009; Section Chairs-elect 2008-2009  
**Subject:** Florida Bar CLE Committee Agenda Item - Potential Impact on Bar Sections

Section Chairs and Chair-elects,

The Florida Bar CLE Committee has been asked to evaluate the need of establishing a financial hardship fee waiver policy that would possibly enable unemployed attorneys, underemployed attorneys, government attorneys, Florida Registered Paralegals, etc. to become eligible to attend Section/Bar CLE programs at a reduced cost or no cost. Of course, it is the Sections who would be most impacted by such a financial hardship fee waiver policy because of the 80%/20% split of the net proceeds. Some Sections could certainly be impacted more than others. Sections with a higher number of government-type lawyers and/or public interest-type lawyers would most probably feel the greatest financial impact.

Before the CLE Committee addresses this agenda item, I wanted to reach out to the current Section Chairs and Section Chairs-elect to solicit your thoughts and input on this agenda item with regard to the possibility of establishing a financial hardship fee waiver policy prior to the committee's addressing the item on the agenda during the Bar Annual Convention on Thursday, June 25th. Please feel free to share this e-mail with your Section CLE Chair/Coordinator and your Section's liaison to the Bar CLE Committee.

Please e-mail your response(s) directly to me at [thill@flabar.org](mailto:thill@flabar.org) . I would like to ensure

II C 1 (2)



that Section leadership's input is considered during the discussion of this item.

Terry L. Hill  
Director, Programs Division  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300  
Phone 850-561-5700  
Fax 850-561-5825  
E-Mail [thill@flabar.org](mailto:thill@flabar.org)

II C 1 (B)

**DRAFT**  
The Florida Bar Administrative Law Section  
Public Utilities Law Committee presents

**Practice Before the Public Service Commission:  
Things You Should Know**

November 6, 2009  
Betty Easley Conference Center, Room 152  
4075 Esplanade Way  
Tallahassee, Fl. 32399  
850-413-6082

8:30 a.m. – 9:00 a.m.  
Late Registration

9:00-9:10 a.m.  
Introductory Remarks  
Chairman Matthew Carter, Florida Public Service Commission

9:10-10:00 a.m.  
Ethics Rules and State Agencies  
Julie Costas, Verlindia Doss (?), Florida Commission on Ethics

10:00-10:45 a.m.  
FPSC Processes – How to proceed – Unraveling the Mystery

10:45-11:00 a.m.  
Break

11:00-11:45 a.m.  
Practitioners Panel

11:45-12:45 a.m.  
Panel of Former FPSC General Counsels

## BOARD OF GOVERNORS

April 3, 2009

The Board of Governors met on April 3 in Coral Gables. Here are some of the highlights of our meeting.

The Board approved a new legislative position, proposed by the Attorney-Client Task Force and supported by the Government Lawyers Section, to back expanded protection for the attorney work product for government lawyers advising public bodies. The new legislative position calls for broadening the exemption from the public records law to include certain factual information prepared for specific litigation and for revising the exemption from the public meetings law to allow more persons to participate in closed sessions.

The Board approved in concept a Bar-sponsored voluntary self-disclosure form that may be used by candidates running for election for the trial courts. The Program Evaluation Committee is continuing to review a specific candidate questionnaire recommended by the Judicial Evaluation and Administration Committee. The self-disclosure questionnaire is intended to help educate voters about candidates in judicial elections.

The Board voted to approve guidelines recommended by the Professional Ethics Committee for "offshoring" legal work to another country. Those guidelines are now posted on the Bar's website. The committee is continuing to work on possible rules for offshoring legal services.

President Jay White has appointed a special task force to study the Clients' Security Fund program, which is facing both more claims and a higher amount of claims. The chair of the task force said the program will have to dip into its reserves for the first time in several years, or it won't be able to pay the maximum guaranteed reimbursement of \$25,000 to all claimants this year. The task force is to present recommendations at our next meeting

The Board approved the Bar's 2009-10 budget, with no increase in membership fees. The \$38 million budget raises the amount of annual fees allocated to the Clients' Security Fund from \$20 to \$25, and allocates funding to overhauling and improving the Bar's website. We will consider member comments on the budget at our next meeting.

The Board also approved a recommendation from the Program Evaluation Committee to end the annual Midyear Meeting, beginning in the 2010-11 Bar year. This move reflects falling attendance at the Bar's three main annual gatherings (General Meeting, Midyear Meeting, and the Annual Convention), increasing use of tele- and video conferencing, and will save the Bar around \$50,000. The action has the approval of more than 80 percent of the Bar's committee chairs.

III G(1)

Those of you who are friends of National Public Radio may want to make note: The Board affirmed the staff opinion that a spoken disclosure that the speaker is a nonlawyer spokesperson is required in radio sponsorships (public service announcements) on NPR under Rule 4-7.5(b)(1)(B). However, NPR will not provide this disclosure, and the Board voted to suspend enforcement of this rule as applied to such sponsorships of National Public Radio and Television only, pending action by the Supreme Court on a related proposed change in the rule.

The Board deferred action on a rewriting of Ethics Opinion 90-6, which governs an attorney's duty when he or she discovers a criminal defendant client is proceeding under a false name. This issue has proven to be both controversial and complex, and we welcome your comments and advice.

Finally, we heard a report on a petition filed at the Supreme Court asking the court to order Gov. Charlie Crist to fill a vacancy on the Fifth District Court of Appeal from a list of six candidates submitted by the Fifth DCA Judicial Nominating Commission. Gov. Crist has declined to make the appointment, saying he wants a more diverse list of candidates, but the JNC has refused to change its nominations. The Bar is unlikely to take any action unless and until the Supreme Court decides whether it will accept jurisdiction in the case.

Our next meeting is scheduled for May 28-29. In the meantime, please contact us if you have questions or if we may be of service.

Larry Sellers

III G(2)

At its May 29 meeting in Key West, The Florida Bar Board of Governors:

- Rejected a proposed redrafting of Ethics Opinion 90-6 from the Board Review Committee on Professional Ethics and adopted the draft proposed by board member David Rothman. The committee proposal required the attorney to inform the court if the client was using a false name, if the lawyer learned of that after he or she had formally appeared in the case and the client refused to correct the record. The alternative opinion provided that, "The lawyer may not inform the court of the false name except when the client affirmatively lies to the court concerning his or her true name." Both opinions require a lawyer to decline representation if learning the client is proceeding under a false name, or to withdraw if learning of the deception before formally appearing in the case.

- Approved new rules for the Clients' Security Fund program. That includes raising the maximum amount for reimbursement when a lawyer misappropriates from a client from \$50,000 to \$250,000, and making all payments at the end of the fiscal year. If not enough money is available to pay the full amount of the approved claims, then payments will be made pro rata based on available funds. Reimbursements in cases where fees were paid but no useful services provided will remain at \$2,500. The special committee that made the recommendations will be continued so it can study possible further refinements to the problem.

- Made one final change to the Bar's 2009-10 budget, approving the budget for the Family Law Section which had not been completed when the board approved the budget in March. The budget has a slight deficit for next year, but keeps annual membership fees at \$265 for active members and \$175 for inactive members. The budget now goes to the Supreme Court.

- Approved as recommended by the Program Evaluation Committee a revamping of the Bar's Henry Latimer Center for Professionalism, which will focus on preventing unprofessional conduct including a program of voluntary mentoring for new lawyers.

- Approved as recommended by the PEC changes for the Bar's Fee Arbitration Program, including having the ACAP program screen requests and finding ways to recruit more arbitrators for the program.

- Heard a favorable report from the Investment Committee, where Chair Ian Comisky reported the Bar's long-term investment fund had risen almost \$2 million as of the end of May. The committee recommended and the board approved allowing the Bar's investment portfolio to slightly exceed its maximum target for cash holdings, which was caused by fluctuations in the stock market.

- Approved a recommendation from the Disciplinary Procedure Committee to change Bar rules to allow a disciplinary revocation in cases where the lawyer wishes to give up his or her license without admitting to underlying grievance charges. The proposed disciplinary revocations would be for a minimum of five years and must be approved by the Board of Governors. The rule changes now go to the Supreme Court. The board also reviewed on first reading from DPC a rule amendment requiring lawyers who wait more than three years before seeking reinstatement from a suspension to show fitness and competence to resume the practice of law. That includes a requirement that the lawyer must have taken 10 CLE credits for each year that the lawyer has been ineligible to practice and those who have been suspended for more than five years must retake portions of the bar exam.

III G (3)

• Made several nominations and appointments. The board nominated Gerald Kogan of Coral Gables, Lawrence P. Kuvin of Wilton Manors, Daryl Manning of Tampa, Richard A. Moore of Miami, T. Rankin Terry, Jr., of Ft. Myers, and Gary Winston of Miami for two vacancies on the Florida Board of Bar Examiners. The Supreme Court will make the final appointment. The board appointed Henry M. Coxe, III of Jacksonville and Edith Osman of Miami to two-year terms in the ABA House of Delegates. Jay White and Mayanne Downs also assume positions in the ABA House of Delegates. The board appointed William J. Banks of Clearwater, Matthew Gissen of Miami, William F. Sansone of Tampa, Allen von Spiegelfeld of Tampa and Barbara J. Williams of Orlando for three-year terms on the Florida Lawyers Assistance, Inc., Board of Directors. The board appointed Christie Anne Darias Daniels of Miami, Dolly V. Davis of Jupiter, William Manikas of Boynton Beach, Theodore W. Small, Jr., of Deland, Eric M. Sodhi of Miami, and Daniel H. Thompson of Tallahassee to two-year terms on the Florida Legal Services, Inc., Board of Directors.

III G(4)

Nominating Committee Recommendations

**II. Recommended officer nominations for 2009-10:**

Chair: Seann M. Frazier

Chair-Elect: Cathy M. Sellers

Secretary: Allen R. Grossman

Treasurer: F. Scott Boyd

Immediate Past Chair: Elizabeth McArthur

**II. Recommended nominees for positions of council members whose terms expire 6/30/09:**

1. Paul Amundsen
2. Dan Stengle (for Donna Blanton's position)
3. Lisa S. Nelson
4. Daniel Nordby
5. Linda Rigot
6. Amy Schrader (for Dave Watkins' position)
7. Bill Williams

**III. Recommended nominee for Scott Boyd's membership slot, ending 6/30/10 (vacancy would be created if proposed nominee Scott Boyd is elected to officer position)**

Richard J. Shoop

V A I C I

Name	Email	Phone(s)	Business
<b>AL</b>			
Amundsen , Paul	pamundsen@ammolaw.com	Office phone: 850.425.2444 Office fax: 850.425.2447	
Bertron , Andy	andy.bertron@nelsonmullins.com	Office phone: 850.907.2507 Office fax: 850.907.2501	
Blanton , Donna	dblanton@radeylaw.com	Office Phone: 850.425.6654 Office Fax: 850.425.6694	
Boyd , Scott	boyd.scott@leg.state.fl.us	Office phone: 850.488.9110	
Cooke , Michael	michael.cooke@ruden.com	Office phone: 813.222.6600	
Frazier , Seann	fraziers@gtlaw.com	Office Phone: 850.222.6891 Office Fax: 850.681.0207	
Grossman , Allen	a.grossman@mgfbllaw.com	Office Phone: 850.385.1314 Office Fax: 850.385.4240	
Jennings , Clark	jenninc@doacs.state.fl.us	Office Phone: 850.245.1312 Office Fax: 850.245.1330	
Kearney , Debby	deborah.kearney@fldoe.org	Office Phone: 850.245.0442 Office Fax: 850.245.9379 Cell Phone: 850.599.1221	
Lamb , Bruce	bruce.lamb@ruden.com	Office phone: 813.222.6605 Office fax: 813.314.6905	
McArthur , Elizabeth	emcarthur@radeylaw.com	Office Phone: 850.425.6654 Office Fax: 850.425.6694	
Meffert , Wellington	wellington.meffert@floridahousing.org	Office phone: 850.488.4197 Office fax: 850.414.6548	
Nelson , Li	li_nelson@doah.state.fl.us	Office Phone: 850.488.9675 Office Fax: 850.488.5366	
Nordby , Daniel	dnordby@ausley.com	Office phone: 850.224.9115 Office fax: 850.222.7560	
Rigot , Linda	linda_rigot@doah.state.fl.us	Office Phone: 850.488.9675 Office Fax: 850.488.5366	
Sellers , Cathy	csellers@broadandcassel.com	Office Phone: 850.681.6810 Office Fax: 850.681.9792	
Sellers , Larry	larry.sellers@hklaw.com	Office Phone: 850.425.5671 Office Fax: 850.224.8832	
Stiller , Shaw	shaw.stiller@dca.state.fl.us	Office phone: 850.488.0410 Office fax: 850.922.2679	
Watkins , Dave	watkins@floridacourts.com	Office Phone: 850.671.2644 Office Fax: 850.671.2732	
Wetherell , Kent	kent_wetherell@doah.state.fl.us	Office phone: 850.488.9675 Office fax: 850.488.5366	
Williams , Bill	wwilliams@gray-robinson.com	Office Phone: 850.222.7717 Office Fax: 850.577.3311	



Administrative Law Section  
Committees and Liaisons 2008-2009

CLE Committee	Bruce Lamb, Chair Li Nelson Paul Amundsen Wellington Meffert Scott Boyd
TFB CLE Committee Liaison	Cathy Sellers
Council of Sections Liaison	Seann Frazier Alternate: Clark Jennings
Law School Liaison	Kent Wetherell, Chair Shaw Stiller Bruce Lamb Quinn Henderson
Legislation	Bill Williams, Chair Linda Rigot Andy Bertron
Long Range Planning	Seann Frazier, Chair Dave Watkins
Membership	Dave Watkins, Chair
Publications	Debby Kearney, Chair
Newsletter Editor	Donna Blanton
Newsletter Co-Editor	Amy Schrader
Casenotes Editor	Mary Smallwood
Agency Snapshots Editor	Wellington Meffert
Bar Journal Column Editor	Debby Kearney
Public Utilities	Michael Cooke
Webpage Committee	Daniel Nordby, Chair Scott Boyd
Environmental & Land Use Law Section Liaison	Shaw Stiller
Health Law Section Liaison	Allen Grossman
Board of Governors Liaison	Larry Sellers

VI B(1)

Young Lawyers Board Liaison

Christine Davis Graves

Ad Hoc committees

Appellate Rules Committee  
(continuation if needed)

Linda Rigot, Chair  
Kent Wetherell  
Donna Blanton  
Daniel Nordby

APD Volunteer Program Committee:

Andy Bertron, Chair  
Allen Grossman  
Clark Jennings  
Julie Waldeman

## SECTION LEGISLATIVE POSITIONS

### Administrative Law Section

July 25, 2008

1. Opposes any amendment to Chapter 120, *Florida Statutes*, or other legislation, that undermines the rule-making requirements of the Administrative Procedure Act by allowing statements of agency policy without formal rule-making.
2. Opposes any amendment to Chapter 120, *Florida Statutes*, or other legislation to deny, limit or restrict points of entry to administrative proceedings under Chapter 120, *Florida Statutes*, by substantially affected persons.
3. Opposes exemptions or exceptions to the Administrative Procedure Act, but otherwise supports a requirement that any exemption or exception be included within Chapter 120, *Florida Statutes*.
4. Supports voluntary use of mediation to resolve matters in administrative proceedings under Chapter 120, *Florida Statutes*, and supports confidentiality of discussions in mediation; but opposes mandatory mediation and opposes imposition of involuntary penalties associated with mediation.
5. Supports uniformity of procedures in administrative proceedings under Chapter 120, *Florida Statutes*, and supports modification of such procedures only through amendment of or exceptions to the Uniform Rules of Procedure.
6. Opposes amendments to Chapter 120, *Florida Statutes*, or other legislation that limit, restrict, or penalize full participation in the administrative process without compelling justification.
7. Supports adequate funding of the Division of Administrative Hearings and other existing state administrative dispute resolution forums in order to ensure efficient resolution of administrative disputes.

VIC(1)