

# Administrative Law Section Newsletter

Volume XVIII, No. 1

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## Uniform Rules of Procedure

by Steve Pfeiffer

The Florida Legislature wants State agencies to do business in a consistent manner. This intention is part of the 1996 revisions to the Administrative Procedure Act. Revisions that rework earlier APA provisions that provided for adoption of "model rules of procedure" are the clearest manifestation of it. Section 120.54(5) renames the model rules the "uniform rules of procedure," and clarifies the intent that one set of rules should govern processes in every agency. The role that the old model rules were intended to play was a matter of fair debate. There is no longer room for that debate. The Act now provides: "On filing with the department (the Department of State), the uniform rules of procedure shall be the rules of procedure for each agency subject to this chapter. . ." F.S. 120.54(5)(a)1.

The Administrative Commission (the Governor and Cabinet of Florida wearing that hat) is given responsibility for adopting the uniform rules of procedure. Because the uniform rules will have more vigor than the model rules, the content of them takes on new importance. The Administrative Law Section, consistent with its earlier efforts to update the model rules, has volunteered to draft a complete set of uniform rules for submission to the Administration Commission.

The Section, through its chair, has established a uniform rules commit-

tee that is composed of members of the Section who represent a broad spectrum of private and public perspectives. The committee has ambitiously committed to providing a complete draft to the Executive

Council of the Section in time to allow the Council to consider the draft, revise it, and submit it to the Administrative Commission by October 1, 1996. It is anticipated that the Com-

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## From the Chair ...

by William E. Williams

As the Administrative Law Section embarks on a new Bar year, we do so in a landscape that has been substantially altered by the actions of the 1996 Florida Legislature. The practical effects of the recently enacted amendments to the Florida Administrative Procedure Act will be one of the primary focuses of our Section's activities in the coming year. We can also anticipate some activity in the coming session of the Legislature to deal with issues that were either not addressed or were not resolved last year. Specifically, Cabinet reform and constitutional revision are likely to become hot topics for debate, Legislative and otherwise.

The Florida Constitution requires that a new Constitution Revision Commission convene in 1997 to consider potential revisions to the Florida Constitution to be placed on the 1998 general election ballot. In

1978, Florida voters rejected all of the recommendations of the first Florida Constitution Revision Commission. As a result, it is anticipated that many of the issues considered in 1978 will likely be revisited, and that many additional issues of interest

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**FROM THE CHAIR**

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will be considered for the first time. It is extremely important that the Section monitor this process. The Commission will consist of the Florida Attorney General, 15 members selected by the Governor, 9 members selected by the Speaker of the House of Representatives, 9 members selected by the President of the Senate and 3 members selected by the Chief Justice of the Florida Supreme Court.

On January 24, 1995, a 9 member Citizen's Commission on Cabinet Reform was appointed by the Governor and Cabinet to review the statutory functions and responsibilities of the Governor and Cabinet sitting as a collegial body. Prior to the convening of the 1996 legislative session, the Citizen's Commission on Cabinet Reform, chaired by former Governor Ruben Askew, submitted a 200 page report recommending transfer of a number of functions presently performed by the Governor and Cabinet to the Governor sitting alone, and further recommended that many of the functions be retained under the Governor and Cabinet. These recommendations were considered in the House, but no significant changes occurred during the 1996 legislative session. However, this issue will likely arise again either in the 1997 legislative session or in the course of constitutional revision. The Section will monitor the course of the deliberations on both cabinet reform and constitutional revision.

Among the functions served by the Administrative Law Section is 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." Our Section also provides opportunities, through the annual Pat Dore Administrative Law Conference, to discuss and make recommendations on issues of administrative law with representatives from the judiciary, Legislature, state agencies, local governments, private bar, news media, academia and the public.

During this past bar year our Section had the unprecedented opportunity to become actively involved in the first major overhaul of the Florida Administrative Procedure Act since its adoption in 1974. The Section's participation was remarkable, both from the standpoint of its effectiveness and the fact that it occurred at all. As most of you know, the approximately 1,000 members of our Section are split almost equally between private and public sector practitioners. This diversity is also reflected in the membership of the Section's Executive Council. Notwithstanding the different perspectives that you might expect to be reflected among our members, the Executive Council unanimously endorsed a wide-ranging series of legislative positions that were ultimately reflected in the APA bill passed by the Legislature and signed into law by the Governor.

The amendments to the Florida Administrative Procedure Act, which become effective October 1, 1996,

represent the culmination of almost three years of intensive debate concerning the manner in which executive branch decision-making in Florida should occur. The Administrative Law Section's fundamental position throughout this debate was based on the proposition that the existing Florida system was far superior to that of any other jurisdiction in the country, that it was not fundamentally flawed, and that any legislative changes should not deprive the public of its ability to fully participate in agency decision-making. Members of our Section participated in task forces established by the House and Senate in 1994 and 1995 to review the APA and make recommendations concerning a variety of areas deemed appropriate for legislative action. Much of this work was included in Senate Bill 536, passed by the Florida Legislature in 1995, and vetoed by the Governor. Subsequently, our Section was active both as members of and as participants before the Governor's Administrative Procedure Act Review Commission and another committee established to draft a "simplified" APA. Section input was actively sought by the Governor's APA Review Commission, and the Section was also requested on several occasions to share its views with various legislative committees during the 1996 Legislative Session.

The Administrative Law Section emerged from this process with, I think, an enhanced reputation for evenhandedness and objectivity. Naturally, this type of involvement can only occur when the Executive Council and our membership generally can reach the types of consensus reflected in the positions ultimately taken by the Section during this last Legislative Session.

Because of the far reaching changes contained in the new APA legislation, one of the first orders of business this year will be an effort to fully understand these changes and attempt to educate our members and the public generally on their effect. The annual Pat Dore Administrative Law Conference is scheduled for Tallahassee on October 4 and 5, 1996. Mary Smallwood will Chair the conference this year, and has put together an outstanding program. The

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highlights of the program this year will be a series of panel discussions involving a variety of issues, including an historical perspective on the background of the new legislation, together with discussions of specific areas of the legislation which create new remedies or substantially change existing ones. Many of the major participants in the legislative process will speak at the conference. Lieutenant Governor Buddy McKay will be our luncheon speaker. The conference will be the first major effort to fully explore the new amendments, and will be well attended. As a result, everyone should reserve a spot at the conference as quickly as possible.

In addition to the Administrative Law Conference, the Executive Council of the Section will be focusing its efforts in a variety of other areas in the coming year. Steve Pfeiffer, a former Chair of the Section, is heading a workgroup that is already deeply involved in drafting Uniform Rules of Procedure that will

replace the old Model Rules of Procedure contained in Chapter 28 of the Florida Administrative Code. The recently passed APA legislation requires the Administration Commission to adopt Uniform Rules of Procedure by July 1, 1997. The working group's timetable is to submit a draft of the Uniform Rules to the Administrative Law Section Executive Council at its meeting on September 20, 1996. Thereafter, the draft of the Uniform Rules will be forwarded to the Governor's office, which anticipates initiating the rule adoption process expeditiously, in order to have the Uniform Rules in place well before the July 1, 1997 deadline.

During the coming year our Membership Committee will be making a concerted effort to markedly increase the membership of our Section. In particular, we will work toward increasing the number of affiliate members of our Section, and to increase the membership of our Public Utilities Law Committee.

The Section is continuing efforts to initiate a student writing contest for students at Florida law schools. Pledges are being sought to fund the cash prizes associated with this contest, and we hope to have the contest up and running in the coming year. Also in this connection, the Section will work to establish a working relationship with each of the law schools in the state, with a view toward perhaps supplying guest lecturers or other assistance on matters relating to Administrative Law.

In short, much work remains to be done during the coming year. All of our committees can benefit from increased participation by our members, particularly those who have not served actively in the past. It is important that we continue to involve all of our members in Section leadership roles so that new ideas can be exchanged and debated. I strongly encourage each of you to contact any officer or Executive Council member should you wish to participate actively in the Section's activities.

## UNIFORM RULES

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mission will schedule workshops, revise the proposed draft as needed, and proceed to formal rulemaking sometime after the first of next year. Because adoption of uniform rules fits nicely with Governor Chile's goal to reduce the number of agency rules, it is anticipated that there will be some movement toward adopting uniform rules before the mandatory date set in the revised Act (July 1, 1997), and also some movement toward agencies complying with them before the statutory deadline of July 1, 1998.

All of this has saddled the Section's uniform rules committee with an ambitious schedule. We are meeting monthly and have divided into drafting subcommittees that meet considerably more frequently than that. The Committee wants to be in a position to submit a draft to the Executive Council by September 1.

In 1992, the Section created a work group to propose a complete revision to the model rules of procedure. In 1993, a draft was submitted

to the Governor's Office of Planning and Budgeting ("OPB") which serves as staff to the Administration Commission. OPB worked with a number of agency attorneys, revised the Section's proposed draft, and conducted a formal public workshop in Tallahassee. Because of the fact that legislation was being proposed that would change the role of the model rules, it was ultimately concluded that the revision effort should be abandoned pending legislative efforts that ultimately resulted in this year's revisions to the Administrative Procedure Act. The Administrative Law Section's new committee used the draft that OPB had subjected to workshops as its starting point. In view of the enhanced status that the uniform rules enjoy and a number of specific revisions to the Act, a lot more work is required.

The committee is in the process of drafting new provisions that will address the following issues:

1. The entire rule adoption process (Revised F.S. 120.54), with special emphasis on rule development processes (F.S. 120.54(2)), and negotiated rulemaking (F.S. 120.54(2)(d));

2. The new variance and waiver procedure (F.S. 120.542);

3. Bid disputes (F.S. 120.57(3));

4. Mediation of disputes (F.S. 120.573);

5. The formal hearing process (still 120.57)(1), thankfully; and,

6. The uniform rules exception process (F.S. 120.54(5)(a)2).

The failure of the model rules to establish uniformity created opportunities for small groups of lawyers and other practitioners to specialize in representing clients before single agencies. This opportunity has in many respects been based not on substantive expertise, but rather on knowledge of unique procedures. Even the most mundane aspects of practice could be buried in long paragraphs. For example, learning an agency's peculiar notion of the appropriate time limit for filing exceptions to recommended orders could be tricky, and dangerous if missed. It was becoming too hopelessly complicated for an attorney who had not developed expertise in the way individual agencies did business to represent clients before them. It was too easy to make a devastating mistake.

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Once adopted, the uniform rules will help change that. If a practitioner becomes familiar with the uniform rules, and with the practice of a single agency, she or he will be in a position to understand the administrative process for every agency.

This is not to say that agencies will need to slavishly adhere to processes that do not suit their needs. The Act provides that agencies can seek exceptions to the uniform rules by petitioning the Administration Commission. The Commission can grant exceptions when they are necessary in order to implement other statutes, or to conform to requirements imposed as a condition to receiving benefits under federal law, or as required for the efficient operation

of the agency. An agency cannot, however, adopt rules that are inconsistent with the uniform rules without first securing an exception from the Commission. Once it secures an exception the agency must publish its rules that vary from the uniform rules separately in the *Florida Administrative Code*. In this way variances from the norm will be immediately apparent to people who are affected by them including administrative law practitioners.

The Section hopes that its efforts in drafting proposed uniform rules will assist the Governor and Cabinet in meeting their statutory responsibilities even sooner than the Legislature envisioned. Our product will be better if we get broad input. We welcome your insights, ideas and comments. If you want to see and comment on the Committee's draft, please FAX a request to Jackie

Werndli at the Bar (904/561-5825). She will send you a copy. If you want to make written comments, send them to me at 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100. If you want to take part in the Executive Council's discussion, the meeting has been scheduled for September 20, at 10:00 a.m. at the conference room of Huey, Guilday and Tucker, 106 East College Avenue, Tallahassee. The opportunity to be heard does not end there. The Administration Commission itself is expected to conduct workshops around the State later in the Fall.

Since its adoption in 1974, two purposes of Florida's Administrative Procedure Act have been to make the State's business more accessible and more easily understood. The 1996 revisions to the Act have not left these purposes behind. Good uniform rules can help get us there.

## Current PSC Proceedings That Affect You

by Floyd R. Self

This edition of the column is devoted to those who are not regular public utility practitioners. While you may believe that you have little interest in public utility law, the Florida Public Service Commission ("PSC") is presently involved in several proceedings that will have significant consequences for you as a lawyer and a consumer.

### Local Telephone Service Competition

In 1995, the Florida Legislature removed the longstanding legal monopoly for local telephone service granted to the local exchange telephone (companies such as BellSouth, GTE Florida and Sprint-United/Centel). The rules affecting how the incumbent local telephone companies must deal with their new local competitors were further revised by the Telecommunications Act of 1996 signed by President Clinton in February. These legislative actions remove legal barriers to local telephone service competition, offering consumers the potential to *choose* local tele-

phone service from alternative providers. These new local carriers may include the long distance companies, cable television providers, wireless carriers, power companies, and most anyone else with the technical and financial wherewithal and a certificate from the PSC. Such choice should, as competition evolves, provide new and improved services at more favorable rates.

Legally, both legislative enactments pose new and unique challenges. Both statutes require compressed time periods for litigating disputes and establishing policies that are unprecedented for both the PSC and the Federal Communications Commission ("FCC"). As a consequence, both agencies have instituted accelerated proceedings and employed novel litigation practices. For example, the PSC has required notification of discovery objections in as little as 5 days from service with the discovery responses due in as few as 10 days. In several proceedings, all service must be by hand delivery or overnight courier, which can be both complicated and costly since

many of these proceedings can involve numerous independent parties. Further, the PSC, which traditionally has relied upon prefiled direct and rebuttal testimony, has required that certain petitions for relief include at the time of filing the petition the petitioner's prefiled direct testimony, a statement of proposed issues, and, in the dispute proceedings, a concise statement of matters in agreement and disagreement.

The 1996 amendments to Florida Statutes Chapter 120 provide other, unique legal issues. For example, new Section 120.80(13)(d) provides that in implementing the Telecommunications Act of 1996, the Commission "is authorized to employ procedures consistent with the Act." But this directive leaves open under exactly what procedures, and administrative due process, would be permitted or required. Moreover, it has been suggested that new section 120.80(13)(d) may also resolve apparent substantive law conflicts between Florida Statutes Chapter 364 (Florida's telecommunications statute) and the new Federal Act. The

resolution of these various legal proceedings can have a substantial impact on the introduction and evolution of local telephone service competition.

### Long Distance Telephone Service Competition

If you know that long distance competition has existed for over 10 years, congratulations. The new twist is that the local exchange companies (BellSouth, GTE Florida, Sprint-United/Centel, etc.) may now also seek to serve as a presubscribed long distance carrier. The local exchange companies are joining an already crowded long distance market—Florida has authorized several hundred intrastate providers. But the entry of the local exchange companies, combined with the introduction of “short haul” long distance competition that had been reserved to the local exchange companies, will provide consumers even more opportunities for price and service competition.

The only legal impediment in the Federal Act is that, in Florida, BellSouth must first demonstrate compliance with certain specified criteria regarding the status of local competition within its service area. The BellSouth application to the FCC for long distance authority requires “consultation” with the PSC, which raises unique legal issues. First the consultation process is not specified, but presumably the state agency must do so subject to its own procedural and substantive law requirements, especially since the Federal Act requires findings of fact. Of course, as is noted above, the 1996 amendments to Florida Statutes section 120.80(13)(d) authorize the PSC to “employ procedures” consistent with the Federal Act. Second, the FCC must act on the BellSouth petition in 90 days, leaving the state to conduct a complete evidentiary proceedings in less than 45 days! Third, notwithstanding the length of the Federal Act, the specific requirements BellSouth must meet are not subject to universal agreement.

The stakes in these proceedings are enormous. Some estimate that the incumbent local carriers can quickly obtain 20% or more market

share in their respective service areas from the long distance companies. Moreover, the ability to combine long distance service with local telephone service and, potentially, cable television and wireless services, poses interesting price and service options for consumers. Ironically, while such a competitive environment should be a “win-win” situation for consumers, the transition to a robustly competitive marketplace could be delayed due to *increased* short term regulatory oversight and litigation due to implementation disputes.

### Water and Wastewater Rate Increases

The provision of water and wastewater treatment services may seem like local matters, but federal, state, and local laws all impact water quality. The PSC has no control over the multitude of regulations governing the provision of water and the treatment of wastewater. However, for residents of 39 counties, the PSC determines *how* such water costs are born by consumers. (In the other counties, the county regulates the rates.)

Increasingly, water and wastewater utility rate case filings arise from utility efforts to implement increasingly more stringent requirements for drinking water and the safe disposal of wastewater. It is not uncommon in this industry for a system with a thousand or fewer connections to face environmental compliance improvements of several million dollars. For the average customer, such improvements can have a substantial impact on rates.

These developments pose escalating demands on all systems, but especially smaller systems with fewer customers to absorb costly improvements. As a consequence, there has been some consolidation in utility providers out of the desire to share overhead costs and, potentially, to spread the cost of such regulatory improvements over a wider customer base. The largest private water and wastewater provider in Florida, Southern States Utilities, currently operates over 190 water and wastewater systems in Florida.

Historically, water and waste-

water utilities have filed separate rate cases for each system. In its 1995 rate case, Southern States filed independent financial data for the nearly 140 systems at issue, and rates could be set on such a stand-alone basis. But one rate setting option in the case is implementation of a modified uniform rate. Under such a plan, for example, all water customers with reverse osmosis water treatment would pay the same rate irrespective of location. Similarly, those with traditional well water production facilities would pay a different rate. The concept of such uniform or unified rates is not novel in utility regulation. For example, local telephone service customers in different parts of the state served by the same company and who have similar local calling scopes pay the same rate irrespective of location, the type of equipment and facilities utilized, and the absence of any physical interconnection by the same provider. Similar examples exist in the electric and gas industries.

Environmental compliance requirements have also led to renewed interest in adoption of a conservation rate structure. Water service for some customers has, in the past, meant lower rates per 1000 gallons as consumption increases. To promote conservation, inverted block rates are often promoted—as consumption increases, so does the rate.

Another facet of water conservation has been increased interest in the disposal of treated wastewater. Many new developments now have three lines to each residence: potable water, wastewater, and treated wastewater for irrigation purposes. Even in existing communities that cannot be readily retrofitted for a third, irrigation line, the water management districts and the Department of Environmental Protection are working to have these utilities reuse their treated wastewater to help recharge the aquifer. Thus, instead of traditional treated wastewater discharge into lakes, rivers, or percolation ponds, the wastewater utilities must redirect the treated wastewater. Usually this means treated wastewater being used on golf courses, public landscaping, or by other large land owners with large nonpotable water needs.

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**CURRENT PSC PROCEEDINGS**

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These rate and rate structure proceedings raise new legal issues for the PSC. For example, the Office of Public Counsel was created by the Legislature to represent customers before the PSC. However, in the recent Southern States rate case customers have potentially different interests in the rate design issue. Quite simply, some pay more and others less on a stand alone basis than on a uniform statewide basis, where the lows and highs are basically averaged out. As a consequence, the Public Counsel sought to have Southern States pay for independent outside counsel to represent one class of customers with Public Counsel to represent the other. The PSC denied the motion, and Public Counsel was able to work out an agreement that led to the involvement of additional counsel to represent the various competing ratepayer interests. However, given the potential impact of these issues on ratepayers, it is reasonable to expect them in future cases.

**Electric Competition**

This column and *Florida Trend* have recently documented the rising tide of competition in the electric industry. The electric transmission networks generally have been available for several years for the delivery of electric power from one electric provider's system to another. Now, the industry is moving toward retail competition in some states. Conceptually, with such retail electric service competition, an end user could purchase electricity from any power generation provider and then have that power delivered by the local power utility for a transportation charge. The consequences of such retail competition pose both great rewards and risks for the industry and consumers.

The big four investor-owned electric generation utilities in Florida (the "IOUs"), Florida Power and Light, Florida Power Corporation, Gulf Power, and Tampa Electric, have been shedding employees, writing off assets, and streamlining their operations in anticipation of increased competition. The result has

been no new base rate increases for these providers in the last several years.

In the face of potential retail competition in Florida, all electric utilities, the IOUs, municipalities, and cooperatives, are moving to fortify existing service area boundaries and designating additional territory. While many of these efforts lead to service area territorial agreements, sometimes the rush to serve new customers becomes highly contested. For example, in 1993, Gulf Coast Electric Cooperative secured an agreement with the State Department of Corrections to serve a new prison in Washington County. Gulf Power later petitioned the PSC for authority to serve the prison and asserted that Gulf Coast improperly duplicated Gulf Power's facilities. When the PSC granted Gulf Power's petition, Gulf Coast appealed to the Florida Supreme Court. In a unanimous opinion, the Court reversed the PSC and remanded for an order awarding the service area to Gulf Coast. *Gulf Coast Electric Cooperative, Inc. v. Clark*, \_\_\_\_\_, So. 2d \_\_\_\_\_ (Fla. 1996). This is the first time that a PSC territorial decision was reversed by the Supreme Court.

While retail electric competition is illegal in Florida, the desire to keep or serve large customers raises other issues. Gulf Power sought a tariff amendment to allow it to enter into contract service arrangements for "at risk" customers. While the original request was denied, the Commission opened a generic investigation docket and also directed Gulf Power to rework its request. Meanwhile, some of the municipal electric utilities have been working to meet this issue by considering "special rate" tariffs that by their nature would be available only to certain large customers.

The long term consequences for Florida affect the health and welfare of not only the utilities and their customers, but also the economic development of Florida. On the one hand, if competition were allowed, the local power utility could be left with such high fixed costs that the remaining customers could become subject to substantial base rate increases. Alternatively, without retail competition, a large user may feel compelled to move its facilities to

another city or even another state if it can save enough in its power bill from another provider.

Retail electric generation competition is already authorized in several other states. Whether Florida fully embraces such competition, or moves cautiously in that direction, all consumers will be affected. Ultimately, the PSC will probably be right in the middle by having to approve tariffs or rates that will promote or bar competition and to deal with the resulting consequences.

**Unbundling of Natural Gas Services**

Competitive forces are also at work in the natural gas industry as well, leading to calls for the "unbundling" of natural gas. Essentially, such unbundling is similar to retail electric generation competition—here, customers would be able to buy natural gas from any supplier and have it transported by the local gas distribution company, much like large users can do today. Again, like the electric industry, PSC action arises not from any new Florida law but, rather, by changes at the federal level, other states, and in the industry itself.

In the PSC's unbundling docket, some 30 issues have been identified for review. Interestingly, some of the concepts that were first litigated in the telecommunications industry, such as carrier of last resort, stranded investment, and others, will also be an issue in the unbundling docket, albeit the terms may be different.

The procedure chosen by the PSC for disposition of this subject is somewhat interesting. Rather than establishing a procedure which includes hearings, the Commission has chosen instead to hold a series of workshops through the summer and fall where comments may be received on the issues. Once the workshops have been completed, the PSC Staff will submit a recommendation to the Commission for its action. Assuming the Commission decides to act on the issues, this decision likely will be issued as a Proposed Agency Action ("PAA") order subject to request for a hearing under chapter 120. Alternatively, the Commission may pro-

ceed directly to rulemaking if the action is more appropriate for rulemaking.

If the PAA order process is utilized, the party requesting a hearing must contemplate the consequences of new Florida Statutes section 120.80(13)(b), which provides that only the items protested are at issue and any matter not protested is deemed stipulated. Conceivably, a party may be faced with an all or

nothing situation in deciding whether to protest the PAA order. For example, a party who could live with the overall result may feel compelled to file a "provisional" request for a hearing raising those matters not preferred in order to ensure that if some other party objects on some other basis, those matters in the provisional protest will also be deemed disputed and not stipulated.

Like the other industries that are

subject to competitive pressures, the unbundling of natural gas poses potential rewards and risks for consumers and the utilities. How the transition to such competition is structured, and how the PSC creates or implements such a transition, will ultimately affect how consumers and the utilities benefit from this competition. In the final analysis, this is true for all of the industry areas subject to the PSC's oversight.

# Minutes

## Administrative Law Section Executive Council and Annual Meeting Friday, June 21, 1996, Orlando, Florida

### I. Call to Order

Section Chair Linda Rigot called the meeting to order.

Members present: Johnny Burris, Steve Pfeiffer, Bob Rhodes, Linda Rigot, Floyd Self, Mary Smallwood, Dan Stengle and Bill Williams.

John Newton and David Watkins participated by telephone.

Members excused: Ralf Brookes, Carol Forthman, Bill Hyde, Cathy Lannon, Mike Ruff, Betty Steffens and Diane Tremor.

Others present: Judge Edward Barfield, Donna Blanton, Judge Marguerite Davis, Robert Downie, Bob Fingar, Seann Frazier, Sally Mann, Elizabeth McArthur, Karla Olson-Teasley, Larry Sellers, Cathy Sellers, Judge Robert Smith and Jackie Werndli.

### II. Minutes

Minutes of the April 22, 1996, Executive Council meeting were approved.

### III. Treasurer's Report

A current fund balance of \$31,132.00 was reported with the note that the fund balance at the end of the year may approach approximately \$35,000.00.

### IV. Chair's Report

Linda Rigot reported the Governor has signed the major APA reform bill. The Chair complimented the

Section on its role and involvement in the process of amending Chapter 120, including participation in the Governor's Technical Working Group, the Governor's APA Review Commission, and appearances before the Legislature. The Section took several official lobbying positions, obtained approval of those positions by the Board of Governors, and extensively reviewed proposed legislation for both the executive and legislative branches.

The Chair reported the reviser's bill had passed, with active participation by section members, and that it should be reviewed in conjunction with the APA reform bill.

Ms. Rigot also noted that a bill passed that enables agencies to preserve testimony by video tape. This statutory provision will be implemented by DOAH and Administration Commission rules.

Additionally, the Legislature enacted legislation in conjunction with the Department of Commerce reorganization that contains some revisions to Section 120.54.

The Chair reminded the Council that Board of Governors' approval of the Section's legislative positions will lapse this year and must be renewed, as appropriate.

Ms. Rigot reported 30 applicants, including council members Bill Williams and Cathy Lannon, had applied for a vacancy on the First District

Court of Appeal.

### V. Comments of Judges Davis and Barfield

Judge Davis chairs the Florida Bar Appellate Rules Committee. This committee includes an Administrative Law Subcommittee which Bob Rhodes, Dan Stengle, and Bill Williams serve.

Several administrative law-related appellate rule revisions were presented to the Supreme Court by Judge Davis in early June and Supreme Court ratification is expected later this summer.

Additionally, the Administrative Law Subcommittee is developing proposed rule amendments to implement the recently enacted APA reform bill. These amendments are scheduled to be presented to the full Appellate Rules Committee in early fall. The amendments will address, among other subjects, the appellate record, define rendition of an order for purposes of nonfinal agency action, stays, attorneys' fees, transfer of cases between districts, and will substitute "administrative law judge" for "hearing officer".

Judge Edward Barfield reported the First District Court of Appeal Administrative Law Division has been operating effectively for 18 months. Judges Davis, Barfield, Kahn and Ervin preside in this division, and will soon be joined by Judge

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**MINUTES**

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Benton.

On July 1, 1996, the First District will start its appellate mediation program. The program will apply to administrative law, civil and workers' compensation cases. Judge Wolf will supervise the program.

Donna Gepheart, an experienced appellate mediator, has been hired by the court to administer the program. The goal is to resolve through mediation 150 cases annually. Telephone conferences will be used whenever possible. Cases will be screened by the mediator following a notice of appeal. Judges will not participate in selection of the cases to be mediated. If selected, parties must participate initially in a mediation session, however, participation does not toll the usual appeal time frames. Confidentiality will be retained.

The First District's case management program will continue under the supervision of senior staff attorney, Tom Hall.

Judge Barfield observed the Legislature may address the court's overloaded docket by establishing specialty courts, including a court of administrative appeals with statewide jurisdiction. Also, the courts may be granted additional research and administrative assistance.

**VI. Committee Reports**

*A. Continuing Legal Education.* Linda Rigot reported that the June 28 legislative update statewide simulcast to be presented jointly with the Government Lawyers Section has been canceled due to lack of registrations.

*B. Publications.* Dave Watkins reported that the section newsletter was well received this year. Deadlines for next year's articles have been set and the September issue is

almost complete.

Robert Downie reported that 3 of the 5 available *Bar Journal* column articles have been committed and that we are soliciting authors for the remaining two slots.

Linda Rigot advised the Administrative Law Practice Manual will be revised this summer and that authors have been contacted and confirmed.

*C. Legislative Committee.* In light of the Chair's report, there was no Legislative Committee report.

*D. Public Utilities.* Floyd Self introduced Karla Olson-Teasley who is the incoming chair of the committee.

The committee is planning a fall ethics seminar which will highlight small group workshops.

*E. Membership.* Jackie Werndli reported that section membership is approaching 950 members based on new members joining as part of the "Administrative Law in a Nutshell" program package.

*F. Uniform Rules Committee.* Steve Pfeiffer advised this committee aims to submit its work product to the Governor by October 1.

The Executive Council will likely receive the draft in September for advice and comment.

The committee has established drafting subcommittees. The Governor's Office is expected to hold at least one workshop in conjunction with Administration Commission consideration of the rules.

A January 1 Administration Commission adoption date is contemplated.

*G. 1996 Pat Dore Administrative Law Conference.* Mary Smallwood reported the date for the 1996 conference will be Friday and Saturday, October 4 and 5. The day and a half conference will be held at the Center for Professional Development in Tallahassee. The conference will focus on the 1996 APA Reform Act. It will comprise panels and individual speakers and perhaps point and counterpoint discussions.

Upon motion and second, the Executive Council decided that registration fees for the conference would be \$50 for section members and \$75 for non-section members, which would include section membership. An optional lunch could be offered. Mary and Bill Williams will discuss

## Pat Dore 1996 Administrative Law Conference Scheduled for October 4-5

Mark your calendars now for the 1996 Administrative Law Conference to be held October 4th and 5th at the Center for Professional Development in Tallahassee. This year's Conference will honor the memory of Pat Dore, former professor of administrative law at Florida State University.

As you all know by now, the Florida Legislature adopted Committee Substitution for Senate Bills 2290 and 2288, substantially amending Chapter 120, Florida Statutes. As you would expect, this year's Conference will focus on the legislative adoption process and future implementation of the act. Among the speakers will be several legislators who were active during the session and on the Governor's Administrative Procedure Act Review Commission, key agency staff who will be active in the implementation, and lobbyists for a variety of interest groups who will share their perspectives.

Because the act takes effect October 1, 1996, the timing of this conference couldn't be better. We expect it will provide the first real opportunity for many practitioners in the area to hear in depth presentations about the substance of the amendments. Brochures will be mailed out in the near future with full details of the Conference agenda, but make your plans now to be there with us. See brochure page \_\_\_\_.



the possibility of a luncheon speaker. H. *Administrative Law in a Nutshell*. Bob Rhodes reported the program drew approximately 120 registrants. Bob, Johnny Burris and Cathy Sellers will review the video tape and discuss a strategy for marketing the tape.

**VII. Old Business**

A. *Pat Dore Student Essay Contest*. Seann Frazier reported that approximately half of the \$2,400 goal for prizes has been committed. Requests to firms are presently outstanding and additional commitments are expected this summer. Bob Rhodes and Bill Williams will work with Seann on follow up contacts. Initial submissions are expected in Spring of 1997. John Burris and Jim Rossi will contact law schools and law professors about the new program.

B. *Meeting Conflicts*. The council asked Jackie to inquire whether the Government Lawyers Section and Administrative Law Section meetings can be set at different times given overlapping commitments of some executive council members.

**VIII. New Business**

A. *Officer / Executive Council Election*. The following officers were nominated and elected: Robert M. Rhodes—Chair-elect; Catherine M.

Lannon—Secretary; Dan R. Stengle—Treasurer.

The following Executive Council members were nominated and elected: for a term expiring 1997, Richard Keith Donelan, Jr.; for terms expiring 1998: Ralf G. Brookes, Robert C. Downie, II, Seann M. Frazier, William L. Hyde, G. Steven Pfeiffer, P. Michael Ruff and Mary F. Smallwood.

William E. Williams succeeded to the chair.

B. *Budget Amendment*. The Council agreed to amend the present year budget to allocate approximately \$500 for plaques to be awarded to legislators and others who participated in passage of the 1996 APA Reform Act.

**IX. Final Remarks and Presentation of Awards**

Linda Rigot thanked the Council for its support and presented plaques to several Executive Council members.

**X. Program Outline and Closing Comments**

Bill Williams presented a plaque to Linda Rigot and thanked her on behalf of all council members. Bill outlined his goals as increasing the membership in the section, particularly affiliate members; spreading

the work load among more Executive Council members who individually will be asked to either serve on a committee or prepare a CLE, *Bar Journal*, or newsletter article; continue active involvement in the legislative process; participate in constitutional revision, as appropriate; and develop and engage in public information programs concerning the revised APA.

Additionally, Bill would like the Public Utilities Committee to grow, particularly by encouraging more participation by members of the private bar and affiliates.

Donna Blanton will chair the CLE Committee, which will review the format and topics for next year's CLE offerings. Dave Watkins will continue to head the Publications Committee.

Johnny Burris and Jim Rossi will head the Law School Liaison Committee. This group will help coordinate the Pat Dore essay contest and provide speakers to law school classes on administrative law topics.

**XI. Time and Place of next Meeting**

The next meeting of the Executive Council will be held on Friday, September 20, 1996, commencing at 10 o'clock in Tallahassee at the Florida Bar Annex.

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## Join the Public Utilities Law Committee

The Public Utilities Law Committee of the Administrative Law Section is concerned with the legal, technical and economic issues related to regulated providing electric, gas, water, wastewater, and telephone services. If you are a member of the Administrative Law Section and would like to become a member of this committee, please complete and return the form below:

\_\_\_\_\_ I would like to become a member of the Public Utilities Law Committee. (AL709)

Name: \_\_\_\_\_ Fla. Bar No. \_\_\_\_\_

Address: \_\_\_\_\_

City/State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Telecopier: (\_\_\_\_) \_\_\_\_\_

Please return completed form or a copy to: Jackie Wernkli, Program Administrator, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.



The Florida Bar Administrative Law Section presents

# Pat Dore 1996 Administrative Law Conference

October 4 - 5, 1996

Florida State Conference Center  
555 W. Pensacola Street  
Tallahassee, FL

Course No. 7857R

Audiotapes of this program will be available. Contact Jackie Wendli at The Florida Bar for an order form.

## Friday, October 4, 1996

9:00 a.m. - 9:10 a.m.

### Introduction and Welcome

*Mary F. Smallwood, Program Chair*

*William E. Williams, Chair, Administrative Law Section*

9:10 a.m. - 9:25 a.m.

### The Amendment Process—An Historical Perspective

*Robert M. Rhodes—Steel Hector & Davis*

9:25 a.m. - 10:30 a.m.

### The 1996 Legislative Session

*Moderator: Robert M. Rhodes, Steel Hector & Davis*

*Wade L. Hopping—Hopping, Green, Sams & Smith*

*Senator Charles D. Williams*

*Dan R. Stengle—Office of the Governor*

*David Gluckman—Gluckman & Gluckman*

*Stephen T. Maher, Esquire*

10:30 a.m. - 10:45 a.m.

### Questions and Answers

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

### Break

11:00 a.m. - 11:15 a.m.

### The Reorganization and Non-Substantive Rewrite of Chapter 120

*Deborah K. Kearney—Office of the Governor*

11:15 a.m. - 12:00 p.m.

### Overview of Amendments to Chapter 120

*William E. Williams—Huey Guilday & Tucker*

12:00 p.m. - 1:30 p.m.

### Luncheon

*Speaker: Lt. Governor Buddy MacKay*

1:30 p.m. - 2:30 p.m.

### Agency Rulemaking Under the New APA

*James Rossi—Florida State University*

*Lawrence E. Sellers, Jr.—Holland & Knight*

*G. Steven Pfeifer—Department of Community Affairs*

*Thomas G. Pelham—Apgar & Pelham*

2:30 p.m. - 3:30 p.m.

### Adjudication and Alternative Dispute Resolution

*Linda M. Rigot—Division of Administrative Hearings*

*Carol A. Forthman—Cobb, Cole & Bell*

*Ralph A. DeMeo—Hopping, Green, Sams & Smith*

*Sally B. Mann—Maguire, Voorhis & Wells*

3:30 p.m. - 3:45 p.m.

### Break

3:45 p.m. - 4:15 p.m.

### The New Waiver and Variance Provisions

*Donna E. Blanton—Katz, Kutter, Haigler, Alderman, Marks, Bryant & Yon*

*Lynda L. Goodgame—Department of Business and Professional Regulation*

*Martha J. Edenfield—Pennington, Culpepper & Moore*

4:15 p.m. - 5:15 p.m.

### Legislative Oversight and the Joint Administrative Procedures Committee

*Moderator: Jon L. Mills—University of Florida, Center for Governmental Responsibility*

*Patrick (Booter) Imhoff—Streamlining Governmental Regulations*

*Scott Boyd—Joint Administrative Procedures Committee*

*Clifford E. Nilson, Jr.—Office of the Speaker, Florida House of Representatives*

5:15 p.m. - 5:30 p.m.

### Question and Answers with Panel Members

5:30 p.m. - 6:30 p.m.

### Reception

## Saturday, October 5, 1996

9:00 a.m. - 10:00 a.m.

### Issues in Agency Implementation of the New APA

*William H. Congdon, Jr.—Department of Environmental Protection*

*M. Catherine Lannon—Department of Legal Affairs*

*John J. Fumero—South Florida Water Management District*

*Harry L. Hooper—Department of Banking*

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

### Round Table Discussion: The Next Twenty Years

*Moderator: Mary F. Smallwood—Ruden, McClosky, Smith, Schuster & Russell*

*Curtis S. Kiser—Holland & Knight*

*Robert P. Smith, Jr.—Hopping, Green, Sams & Smith*

*Sharyn L. Smith—Division of Administrative Hearings*

*William L. Hyde—Gunster, Yoakley, Valdes-Fauli & Stewart*

*Johnny C. Burris—Nova University*

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**ADMINISTRATIVE LAW SECTION**

William E. Williams, Tallahassee — Chair  
Robert M. Rhodes, Tallahassee — Chair-elect  
Donna E. Blanton, Tallahassee — CLE Chair  
Mary F. Smallwood, Tallahassee — Program Chair

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**Register me for "Pat Dore 1996 Administrative Law Conference" October 4-5, 1996 (053)**

TO REGISTER MAIL THIS FORM TO: The Florida Bar, Jackie Werndli, 650 Apalachee Parkway, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 904/561-5623. ON SITE REGISTRATION, ADD \$10.00. **On-site registration is by check only.**

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- Member of the Administrative Law Section: \$50
- Nonsection member: \$75 (includes Section membership)

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FLABAR ONLINE, The Florida Bar's site on the world wide web of the Internet, can be accessed at: \ <http://www.FLABAR.org> .

This website, which went "online" June 1, 1996, represents a major new information channel for Bar communications with **both members and the general public**. Visitors to the site find a wide range of information at their fingertips. Accessing the FLABAR ONLINE "homepage" (opening screen), provides a menu of the following major categories of information: Organization, Member Services, Consumer Services, Public & Media Information, Law Practice Regulation, Legal Resources, Lawyers' Marketplace and Legal Locator.

Specific content ranges from Bar membership listings ... to information on Bar divisions, sections and committees ... to the text of consumer pamphlets on various legal topics ... to a searchable calendar of CLE seminars ... to ethics opinions ... to grievance and disciplinary procedures. In addition to the Bar-related information "housed on site," the Legal Resources section incorporates links to a vast array of other law-related resources throughout Florida and the U. S. For instance, there is a link that provides the text of U. S. Supreme Court decisions on the same day they are issued.

The content of FLABAR ONLINE will be expanded and updated based on e-mail feedback from Bar members and the public. Patricia O'Neil (telephone 904/561-5763 or 800/342-8060, ext. 5763), in the Public Information and Bar Services Department, coordinates website content.

**The Florida Bar**  
**650 Apalachee Parkway**  
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