Administrative Law Section Newsletter

Vol. XXV, No. 2 Elizabeth W. McArthur, Editor December 2003

From the Chair

by Donna E. Blanton

On November 3, 2003, Robert S. Cohen became the fourth director of the Division of Administrative Hearings (DOAH). Cohen, 46, also will be known as chief judge of the division. He replaces Sharyn Smith, who retired earlier this year after 30 years in state government and 19 years as DOAH's director.

Cohen was selected in mid-October by the Governor and Cabinet, sitting as the Administration Commission. He has worked in private practice in Tallahassee since his graduation from Florida State University's College of Law in 1981. Most of his experience has been in administrative law.

Shortly before beginning work at DOAH, Cohen visited with the Section's Executive Council at its long-range planning retreat. He spoke of the need for DOAH to be "transparent" in its operations.

During the application and interview process for his new job, Cohen said he found that "folks on the outside really didn't know what was going on at DOAH." Although practitioners are generally familiar with hearing procedures at the agency, little else is known about how DOAH works. "There were a lot of misconceptions," he said. Legislators and the executive branch, not surprisingly, want to know more about the agency's operations. Cohen understands that it is his job to provide them with that information, though he stresses that transparency has to be accomplished "without looking over the judges' shoulders and telling them how to rule."

"ALJs aren't going to be put in a position where they can't independently rule on cases," he said.

The week after his selection, Cohen met with the key staff at

Continued, page 7

Brookwood Extended Care Center of Homestead, LLP v. Agency for Health Care Administration: Responding to Administrative Complaints (Or How Not To)

by Samuel J. Morley

When a state agency files an administrative complaint alleging violations based on the agency's investigation and imposing administrative fines, what form of responsive pleading is appropriate to request a hearing? In *Brookwood*[1], the Third District Court of Appeal considered this question. The Court determined that a responsive pleading merely denying the allegations does not obligate an agency to grant a hearing; a formal petition is required that conforms to the Florida Uniform Rules of Procedure.

The Case

The Agency for Health Care Administration (AHCA) conducted personnel interviews and a survey of the Brookwood facility, resulting in a determination that conditions present at the facility threatened the health, safety and welfare of the residents.

Continued, page 2

INSIDE:

BROOKWOOD
from page 1

AHCA filed a 37-page administrative complaint against Brookwood containing specific allegations based on the survey and interviews, and imposing a $81,000 administrative fine. The complaint advised Brookwood of its right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. In response, Brookwood filed a short petition for administrative hearing that generally denied the factual allegations set forth in the complaint.

AHCA found Brookwood's petition inadequate and issued an order to show cause why the petition should not be dismissed for failure to comply with Rule 28-106.201(2), Florida Administrative Code. That rule requires formal hearing requests to contain a "statement of all disputed issues of material fact" and a "concise statement of the ultimate facts...including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action."

Rather then amending the petition, Brookwood's counsel responded with a "recalcitrant[ly] insisten[t]" letter objecting to the agency's position. Brookwood's counsel argued that the agency was the party setting out the facts, and that Brookwood's only obligation was to deny the facts as it deemed fit. It was "ridiculous" for the agency to argue it was unaware of the facts at issue when the agency was the one that set out the facts in the complaint. The agency disagreed and required Brookwood to comply with Rule 28-106.201(2). After Brookwood responded with basically the same petition, the agency denied the petition and entered an order imposing the fine. Brookwood appealed the order.

The Court, in addressing the agency's decision, agreed with the agency's rationale even while taking issue with its eventual decision to deny the petition. The Court noted that the Legislature in 1998 changed Sections 120.54 and 120.569 to clarify that the Section 120.54(5)(b)4. list of items must be included in a formal petition.[2] Under the amended statutes, the burden is now on the person petitioning for an administrative hearing to state the ultimate facts, to identify the facts in dispute and to allege the facts that warrant, in the petitioner's opinion, reversal. "General denials and nonspecific allegations of compliance...no longer suffice."[3] The Court rejected Brookwood's argument that the matter should have been referred to the Division of Administrative Hearings (DOAH) to permit the Administrative Law Judge to rule on the petition's sufficiency, citing a Florida Bar publication that observes that agencies are to review petitions for completeness before forwarding them on to DOAH.[4]

The Court also rejected Brookwood's argument that discovery had not commenced to allow Brookwood to respond with a more specifically pled petition. Litigants like Brookwood, the Court explained, can always obtain a time extension to permit investigation and it is not unreasonable to require Brookwood to narrow the factual matters in dispute and alert the agency as to the undisputed aspects at issue.

Based on these rationales, the Court determined that Brookwood's hearing request was insufficient. However, the Court disagreed with the agency's denial of the petition without leave to amend, holding that the company should be given the opportunity to change its petition to comply with the rules.

The Concurring Opinion

The concurring opinion in the case is notable because it raises several concerns or "hazards" with the administrative procedure currently in place. Judge Cope agreed with the majority's holding but worries about the potential conflict of interest that exists on the agency's part. This conflict arises because the agency that formulates the allegations and imposes the fine is the same entity authorized to review the response to determine if it is procedurally sufficient to allow a hearing. This inherent conflict, according to Judge Cope, requires that the agency's power to deny a hearing be "carefully circumscribed." Judge Cope also addressed the due process clause requirement for fair notice and an opportunity to be heard before imposition of penalties, noting that this requires that doubts about the sufficiency of a petition be resolved in favor of granting the hearing. Finally, Judge Cope questioned the clarity of AHCA's notice denying Brookwood's petition in that it failed to itemize exactly why the hearing request was insufficient, and by doing so, failed to apprise the litigant with sufficient particularity.

To address the due process concerns, Judge Cope recommended that the Legislature revisit section 120.569, which he concluded is a "one-size-fits-all mechanism." The statute applies to the two major types of administrative actions: the type where the agency takes action to deny a permit or license application, and the enforcement type where the agency issues an administrative complaint. For the former, the "statement of material facts" requirement of the rule is fine but for the latter it can be inappropriate. For complaints, the agency has already identified the material facts that support the penalty, and it is not necessary for the litigant to provide this information. Judge Cope asked whether the system of admitting and denying the allegations might be a better route. This is the process used by civil courts as required under the Florida Rules of Civil Procedure.[5] This also prevents the litigant from having to unnecessarily repeat the entire complaint in the litigant's petition for formal hearing.

Conclusion

Judge Cope's view is that a new process for responding to administrative complaints is in order. This does not appear to be a difficult fix. Rule of Civil Procedure 1.110(c), as noted by Judge Cope, could serve as a model for the form of response to administrative complaints. Until that change is accomplished, however, as *Brookwood* clarifies, agencies are required to scrutinize formal petitions for hearings to ensure that they conform to the list of items contained in Section 120.54(5)(b)4.and the Florida Uniform Rules of Procedure.

Endnotes:

[1] 28 Fla. L. Weekly D1869 (Fla. 3d DCA August 13, 2003).

[2] Section 120.54(5), Florida Statutes, states

continued, page 6

Agency Snapshots

Beginning with this issue of the newsletter, members of the Administrative Law Section's Executive Council will be putting together brief profiles of selected State agencies. These are intended to provide basic information for practitioners who have never or only rarely appeared before the featured agency. We will continue running these agency profiles in the newsletter until all major agencies have been covered. Please let us know if you have feedback by contacting Mary_Ellen_Clark@oag.state.fl.us.

Florida Parole Commission

The Florida Parole Commission is constitutionally created and composed of three commissioners appointed by the Governor and Cabinets. The three commissioners determine who of the three shall act as chair, vice chair, and secretary.

Head of the Agency:
Commissioner Monica David, Chair

Agency Clerk:
Andrea Moreland
(850) 922-6137

General Counsel:
Kim M. Fluharty
(850) 488-4460

Hours of Operation:
M-F; 8 a.m. - 5 p.m.

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2601 Blairstone Rd.
Bldg. C, 3rd Floor
Tallahassee, FL

Mailing Address:
2601 Blairstone Rd., Bldg. C
Tallahassee, FL 32399-2450

Kim Fluharty received her undergraduate degree at FSU and her JD from West Virginia University. She clerked for the West Virginia Supreme Court before moving to Florida to begin her career in administrative law; she has been with the Parole Commission for more than 7 years. After having worked as a staff attorney and a commissioner's analyst, Kim enjoys the opportunities presented to the General Counsel's office that allow her to craft solutions from a broad range of perspectives and is excited about the new challenges.

Number of Lawyers on Staff: 3

Kinds of Cases: Inmate litigation, including offenders both within the prison system and those already released.

The Parole Commission assists the Board of Executive Clemency (composed of the Governor and Cabinet) by conducting in-depth investigations, making recommendations, and conducting death row interviews, when requested.

APA Interaction: While inmates are exempted from many APA provisions, the recent *Tedder* case reaffirmed that revocation hearings are governed by tenets of administrative law regarding findings of fact and conclusions of law. See *Tedder v. Florida Parole Commission*, 842 So. 2d 1022 (Fla. 1st DCA 2003).

Tip: Before appearing on behalf of an offender, always research his/her institutional file first.

Florida Department of Health

The Florida Department of Health is a statutorily created gubernatorial agency located at:

Head of the Agency:
Secretary John Agwunobi, M.D.

Agency Clerk:
R. Sam Power
(850) 245-4005

General Counsel:
William W. Large

Hours of Operation:
M-F; 8 a.m. - 5 p.m.

Physical Address:
2585 Merchants Row Blvd.
Prather Building, Ste. 110
Tallahassee, FL

Mailing Address:
4052 Bald Cypress Way, Bin A02
Tallahassee, FL 32399-1703

William Large completed both his undergraduate and law degrees at UF. He was in private practice in Orlando before moving to Tallahassee in 1999 and completed a Masters in Political Science at FSU in 2002.

Number of Lawyers on Staff: 73

Kinds of Cases: The Department handles three major groups of cases and has organized its attorneys accordingly to cover its Headquarters Programs, including Emergency Management, County Health Departments, and Professional Regulation.

APA Interaction: Substantial

Tip: Before appearing on behalf of a licensed professional, always call the Department attorney working with the licensure board to inquire about its meetings and practices.

APPELLATE CASE NOTES

by Mary F. Smallwood

Standing

Environmental Confederation of Southwest Florida, Inc. v. IMC Phosphates, Inc., 28 Fla. L. Weekly 1786 (Fla. 1st DCA 2003)

The Environmental Confederation of Southwest Florida and Manasota-88 filed petitions challenging the proposed issuance of an environmental resource permit to IMC Phosphates for phosphate mining. The petitions were filed pursuant to Section 403.412, Fla. Stat., as amended during the 2002 legislative session. The amended statute provided that any not for profit Florida corporation which was formed for the purpose of protecting the environment could initiate a proceeding under Section 403.412 if it had at least 25 members residing in the county where the activity would occur. Both the Confederation and Manasota-88, while having substantially more than 25 members total, had fewer than that number of members residing in Hardee County where the mining would occur.

The Department of Environmental Protection dismissed the petitions, without prejudice, allowing the groups to amend the allegations to demonstrate standing. Moreover, as other valid petitions had been filed challenging issuance of the permit, the Department notified the groups that they could participate in the proceeding as intervenors. The Confederation and Manasota-88 declined to amend their petitions, instead requesting that the Department enter a final order of dismissal allowing them to appeal the decision to challenge the constitutionality of the statute.

On appeal, IMC Phosphates moved the court to dismiss the appeal on the grounds that the environmental groups were not adversely affected by the final order under Section 120.68(1), Fla. Stat.

The majority of the court held that Manasota-88 and the Confederation were adversely affected by the final order because it deprived them of the right to challenge the permit. The court noted that the issue presented by the groups was the constitutionality of the amendments to Section 403.412. If the environmental groups were not allowed to appeal the dismissal of their petitions because they lacked standing, they would be deprived of the ability to address the issue of constitutionality as the Department could not rule on that issue below.

The court rejected IMC's argument that the groups were not adversely affected since they would have been able to intervene in the ongoing proceeding. It noted that the rights of an intervenor are limited because they were subordinate to the rights of the parties to the proceeding.

Judge Ervin dissented. He would have required the environmental groups to show a factual basis for their allegations of injury. He did not accept the majority's position that simple status as an intervenor was sufficient to show injury without a demonstration that in this particular case the intervenor's participation had been limited. Judge Ervin opined that the majority's decision was contrary to the established rule that a court would not address a constitutional issue unless it was absolutely necessary to the resolution of a case.

Adjudicatory Proceedings

Brookwood Extended Care Center of Homestead, LLP v. Agency for Health Care Administration, 28 Fla. L. Weekly 1868 (Fla. 3d DCA 2003)

See feature article.

Denial of License

Palamara v. Department of Business and Professional Regulation, 28 Fla. L. Weekly 2317 (Fla. 4th DCA 2003)

Palamara applied for a yacht broker's license and the Department proposed to deny the application on the grounds that he was not of good moral character. At the formal administrative hearing, the Department attempted to introduce evidence of prior criminal conduct in the form of final judgments. The prior criminal activity included resisting arrest without violence, fraudulently misappropriating funds from a client for yacht repairs, and avoiding service of process when accused of fraudulently purchasing a yacht for a client. The administrative law judge held that the judgments were not, in and of themselves, competent evidence of poor moral character, citing *Trucking Employees of North Jersey Welfare Fund, Inc. v. Romano*, 450 So. 2d 843 (Fla. 1984), for the proposition that a criminal conviction is not admissible in a civil case to prove the underlying facts in that criminal case.

In its final order, the Department ruled that Rule 61B-60.003(3)(a)7., Fla. Admin. Code, allowed for the introduction of evidence of the disposition of criminal charges for the purpose of determining whether an applicant was of good moral character. On that basis, the Department entered a final order denying the application.

On appeal, the court reversed. It agreed with the Department that evidence of a criminal conviction could be considered by the administrative law judge in determining the moral character of the applicant. However, the court held that such a determination was a question of fact for the trier of fact. Accordingly, the matter was remanded for a determination by the administrative law judge of the applicant's moral character.

Attorney's Fees

Department of Health v. Cralle, 28 Fla. L. Weekly 2016 (Fla. 1st DCA 2003)

The Department of Health challenged the award of attorney's fees to Cralle, a licensed physical therapist, following the issuance of a final order dismissing all charges against him. The matter was initiated by the filing of a complaint against Cralle by a former employee alleging that he had allowed her to prepare Subjec-

tive-Objective-Assessment-Plans ("SOAPs") for patients even though she was not a licensed therapist or therapist assistant.

During the course of the investigation of these allegations, the Department sent its findings and the written statement of the complainant to an outside expert. At this time, Cralle's defense was that he allowed the employee to prepare SOAP notes as part of her educational training. The outside expert recommended interviewing other employees as part of the investigation but also stated that it appeared that Cralle was in violation of certain provisions of law with respect to delegation of responsibilities to unlicensed personnel. The Department, based on this opinion, referred the matter to the probable cause panel. The probable cause panel recommended the filing of an administrative complaint.

At a hearing before the Division of Administrative Hearings, Cralle contended that he had not allowed the employee to prepare SOAP notes. Instead, he testified that he merely dictated notes for her to transcribe. The administrative law judge found that the complainant's testimony was not credible and described her as hostile and unstable. The Department adopted the recommended order and dismissed the charges.

Cralle then sought to recover his attorney's fees under Section 57.111. Fla. Stat. The same administrative law judge heard the request and awarded Cralle attorney's fees and costs. He found that the filing of the administrative complaint was not substantially justified under the statute since the Department should have known that the complainant fit the stereotype of a disgruntled former employee. He further found that the Department should have followed through on the outside expert's recommendation to interview other individuals before sending the matter to the probable cause panel.

On appeal, the court reversed. It noted that in determining whether attorney's fees were justified, the administrative law judge need only review the information presented to the probable cause panel. In this case, the administrative law judge considered the testimony and evidence presented at the final hearing. As the court noted, the probable cause panel could not judge the credibility of the witness since it only had a written statement before it. In addition, Cralle did not assert that he had dictated notes to the employee until the final hearing. Before the probable cause panel, he simply asserted that he had allowed the employee to prepare notes as part of her education. Under the circumstances, the court concluded that the Department's action was substantially justified.

Government in the Sunshine and Public Records

State of Florida v. City of Clearwater, 28 Fla. L. Weekly 682 (Fla. 2003)

The Second District Court of Appeal certified the following question to the Florida Supreme Court:

> WHETHER ALL E-MAILS TRANSMITTED OR RECEIVED BY PUBLIC EMPLOYEES OF A GOVERNMENT AGENCY ARE PUBLIC RECORDS PURSUANT TO SECTION 119.011(1), FLORIDA STATUTES (2000), AND ARTICLE I, SECTION 24(A) OF THE FLORIDA CONSTITUTION BY VIRTUE OF THEIR PLACEMENT ON A GOVERNMENT-OWNED COMPUTER SYSTEM IF THE AGENCY HAS A WRITTEN POLICY THAT INFORMS EMPLOYEES THAT THE AGENCY MAINTAINS A RIGHT TO CUSTODY, CONTROL AND INSPECTION OF E-MAILS?

The Supreme Court rephrased the question by deleting the last phrase regarding the policy of the agency maintaining the right to control and inspect all e-mails.

The case arose when the Times Publishing Company sought to obtain records of certain employees of the City of Clearwater. The City declined to make public e-mails of employees that were deemed private in nature. Both the trial court and the district court agreed that private or personal e-mails were not public records simply because they were placed on a government-owned computer. When Times Publishing sought certification of the question to the Supreme Court, the State sought and was granted intervention on the side of Times Publishing.

The Supreme Court affirmed. Based on the plain meaning of the Public Records law, the Court held that personal e-mails are not "made or received pursuant to law or ordinance or in connection with the transaction of official business" and therefore fall outside the definition of public records in Section 119.011(1), Fla. Stat. The Court concluded that the determining factor must be the nature of the document, not its location.

Mary F. Smallwood *is a partner with the firm of Ruden, McClosky, Smith, Schuster & Russell, P.A. in its Tallahassee office. She is Past Chair of the Administrative Law Section and a Past Chair of the Environmental and Land Use Law Section of The Florida Bar. She practices in the areas of environmental, land use, and administrative law. Comments and questions may be submitted to Mary.Smallwood@Ruden.com.*

This newsletter is prepared and published by the Administrative Law Section of The Florida Bar.

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Administrative Law Section Executive Council Meeting – October 24, 2003

Long-Range Planning Meeting

MINUTES

Call to Order: Chair-Elect Bobby Downie called the meeting to order at 9:30 a.m.

Present: Andy Bertron, Donna Blanton, Mary Ellen Clark, Bobby Downie, Rick Ellis, Paul Flounlacker, Booter Imhof, Clark Jennings, Debby Kearney, Cathy Lannon, Chris Moore, Li Nelson, Judge Rigot, Judge Stampelos, Dave Watkins, and Jackie Werndli.

Absent: Seann Frazier, Natalie Futch, Allen Grossman, Elizabeth McArthur, Cathy Sellers, and Bill Williams.

DOAH: The Executive Council welcomed newly-appointed Director of the Division of Administrative Hearings, Robert Cohen. Chief Judge Cohen provided the Council with an overview of his ideas for the future of DOAH and we enjoyed a vigorous Q&A dialogue with the judge, who gave generously of his time. The Council members look forward to an excellent working relationship with Judge Cohen.

Website: Paul Flounlacker discussed the subject of the Section's newly-released web site. The Council discussed whether to create a listserv and agreed to this concept.

Legislation Committee: Judge Rigot gave the legislative report. A request has been received from the Health Law Section to join with them to contract for a lobbyist for the session. The Council withheld any commitment at this time and the matter will be set for the January agenda, when the upcoming legislative issues might more established. Discussion ensued on the issue of whether current legislative positions contain inconsistencies.

Continuing Legal Education Committee: Li Nelson gave the CLE Committee report. The Council discussed whether to produce a seminar in conjunction with the Bar's Annual Meeting. The consensus was not to pursue such a seminar and instead concentrate our efforts on the Pat Dore Conference to be held in the fall of 2004. The agenda for the Pat Dore Conference will be the 30th anniversary of the APA.

A joint Administrative Law Section-Public Utilities Law Committee CLE is scheduled for December 4, 2003 in Tallahassee. Executive Council members expressed their thanks Natalie Futch for getting this off the ground and for the excellent job she is doing as liaison with the public utilities bar.

It was noted that the Florida Bar's CLE Committee is considering producing an ethics seminar. Members of the Executive Council felt that it was inappropriate for the CLE Committee, which is responsible for approving the seminars of the other committees and sections, to compete with those committees and sections. A motion was made and approved for the section to oppose this action on the part of the CLE Committee if the issue arises again in either a CLE Committee or Council of Sections meeting.

Publications Committee: Mary Ellen Clark reported that the agency interview project is proceeding. Two interviews have been completed for publication in the next newsletter. Mary Ellen distributed a list of sample questions so that similar types of information would be reported about each general counsel. A request was made for volunteers to conduct the interviews. Elizabeth McArthur will coordinate establishing a consistent written format for publication.

Uniform Rules Committee: Chris Moore reported that the committee has met and has divided into subcommittees. The goal is to have a compiled product to the Executive Council for review at its January meeting.

Budget Surplus: An overview of the progress of the Board of Governor's fiscal committee was given by Jackie Werndli. The group is analyzing the fiscal relationship between the Bar and the Sections. Discussion ensued regarding budgeting a portion of the Section's fund balance for programs including long range planning retreat, outreach to members outside of Tallahassee, and coordinating council meetings with CLE's. The 2004-2005 budget will be finalized at the January council meeting.

Respectfully submitted,
Deborah Kearney
Secretary

BROOKWOOD

from page 2

that the uniform rules of procedure "shall" establish procedures that "shall" require the petition to include "a statement of all material facts disputed" and "facts [that] warrant reversal." Section 120.569, Florida Statutes, states that "a petition or a request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b)4....A petition shall be dismissed if not in substantial compliance with these requirements..."

[3] *Brookwood* at 1870.

[4] *Id.*, quoting The Florida Bar, *Florida Administrative Practice*, section 4.7, at 4-11 (6th ed. 2001), as follows: "Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with the requirements or it has been untimely filed..."

[5] Florida Rule of Procedure 1.110(c) states that "a pleader shall state in short and plain terms the pleader's defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge, the defendant shall so state and such statement shall operate as a denial."

Samuel J. Morley *is senior attorney at the Florida Department of Management Services.*

FROM THE CHAIR
from page 1

DOAH. He said he reassured them that "I'm not going to go in there and clean house and bring in a lot of new people. I will go in and see how things are going."

Cohen described himself as an "open door kind of person." He said he wants to hear from practitioners about their experiences with DOAH's Administrative Law Judges. "We need a system that allows people to complain . . . without fear of reprisal," he said. "I want the door open for practitioners to feel free to come in and complain." Cathy Lannon, director of the Administrative Law division in the Attorney General's Office, took Cohen at his word and scheduled an appointment with him the next day to discuss several of her recent experiences with the agency.

Cohen said he also is looking for ideas to make DOAH run more efficiently. "I will look real closely at the clerk's office," he said. "I'll look at the possibility of mandatory electronic filing. There are efficiencies and economies of scale that can be looked at."

Challenges Cohen faces include the continuing integration of the judges of compensation claims into DOAH's operation. The JCCs, who hear workers' compensation cases, were assigned to DOAH in 2001. Acclimating the compensation claims process into the DOAH environment has been difficult, both for the JCCs and for workers' compensation practitioners. The workers' compensation Bar continues to be unhappy that DOAH is charged with promulgating rules of procedure for compensation claims cases. Cohen plans to meet with the Bar's Workers' Compensation Section early in his tenure to discuss DOAH and its operation with them.

Additionally, the Legislature has mandated that child support enforcement cases be heard at DOAH, which could mean between 1,000 and 12,000 more cases each year. Cohen said he is evaluating whether the child support cases must be heard by ALJs or whether "special masters" can be appointed to hear those cases.

Cohen is interested in seeing more alternative dispute resolution at DOAH, though he had no specific plans for such procedures when he spoke to the Executive Council. Rather, he asked Executive Council members for ideas about ADR and about whether mandatory case management conferences would be helpful in resolving cases before hearing.

A native of Orlando, Cohen graduated from Brandeis University in 1979 before enrolling in law school at FSU, where he served on the *Law Review*. He has been a sole practitioner since 1997, representing clients in a variety of administrative and civil litigation matters. From 1981 until 1997, he practiced with several law firms, including Pennington, Moore, Wilkinson & Dunbar, P.A., and Haben, Culpepper, Dunbar & French, P.A. His administrative law experience included mobile home law, certificate of need litigation, and licensure and discipline of health care professionals.

Cohen has been active in the Tallahassee community since he was in law school. He served as president of the Tallahassee Bar Association in 1997-98 and as president of the Tallahassee Bar's Legal Aid Foundation from 2001-02. He has also served as president of the Tallahassee Jewish Federation, of Congregation Shomrei Torah, and of the Lincoln High School Chorus Parents Association. He is married to Karen Asher-Cohen, a shareholder at Radey Thomas Yon & Clark, P.A. They have two teenage children.

Donna E. Blanton *is chair of the Administrative Law Section and a shareholder at Radey Thomas Yon & Clark, P.A.*

Melson Named New PSC General Counsel

by Natalie B. Futch, Chair, Public Utilities Law Committee

Experienced Tallahassee attorney, Richard D. ("Rick") Melson, has agreed to serve as General Counsel of the Florida Public Service Commission.

Melson said he will miss practicing with his law partners at Hopping Green & Sams, where he has practiced primarily in the area of public utility law since the formation of the firm in 1979, but he said he is enjoying his new duties with the PSC. Melson has regularly appeared before the PSC throughout his career, representing clients in the telecommunications, natural gas, electricity, and water and wastewater industries that are regulated by the Commission.

Melson is a *magna cum laude* graduate of the University of Michigan Law School, where he was a member of the Order of the Coif. Before law school, he was enlisted in the U.S. Air Force and he was an Honor Graduate of the Defense Language Institute (Chinese). Melson holds a bachelors' degree in psychology from the University of Florida.

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THE FLORIDA BAR

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