ADMINISTRATIVE LAW SECTION NEWSLETTER

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Veronica E. Donnelly, M. Catherine Lannon, Co-editors

From the Chair

by Gary Stephens

Several weeks have now passed and any dust stirred up by the Administrative Law Conference has begun to settle. I was very pleased by the excellent turnout and by the stimulating and diverse program which Bill Williams and his legion of coworkers had assembled. Some professional conferences have the stated purpose of furnishing answers while others merely pose questions. This conference clearly tended toward the latter. Those who attended in the hope of having the answers generated from administrative law cases over the last year or so sorted out, sifted down and tidily assembled in a carry-out package were slightly disappointed.

The keynote presentations by guest author David Osborne and Lieutenant Governor Buddy MacKay seemed to pose the question, assuming you were a key player in a new administration which felt it had to make a lot of changes quickly in order to do the job it was elected to do, which portions of Chapter 120 would you consider dispensable if their elimination would contribute to a leaner and cleaner, and perhaps a kinder and gentler, administration of state government? Other segments of the program, from the panels on bid disputes to alternative dispute resolution to ethics in government all seemed to bring forth timely questions which, whether because of neglect or oversight, have not been given the attention in recent times which they deserve. Gerald Jaski's poignant remarks on behalf of government lawyers beset by a wide range of ethical and professional challenges were particularly helpful in identifying topics for further discussion.

In any case, I thought that the large attendance and the diverse program furnished a good overview of the types of issues affecting the practice of administrative law in Florida and to some degree the unsettled character of the continuing discussion about how disputes involving governmental authority should be resolved.

While many of these topics will be ad-

continued . . .

Collegial Bodies and the APA: Time Sure Flies When You Are Having Fun!

by Allen R. Grossman,
Attorney General's Office, Tallahassee

As a cure for the problems relating to government agencies, the Administrative Procedure Act (APA) has significantly failed to provide relief to at least one segment of government. The collegial bodies that serve so

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dressed in newsletters and Bar *Journal* articles sponsored by the Administrative Law Section, there remains a need to explore in greater depth, and perhaps more preliminarily, certain topics of broader relevance to our field. Toward this end, I have taken steps to establish three task forces which I hope will provide a forum for discussions, proposals and suggestions during the coming year.

Where possible, a white paper summarizing the collective wisdom of a particular task force group may be in order. These task forces will continue to focus on three separate but overlapping subject areas: 1) administrative proceedings involving local governmental agencies, 2) forums and procedures for citizen involvement in policy disputes, and 3) alternative techniques and mechanisms for simplifying administrative litigation. The initial leadership of these task forces is footnoted below. Please feel free to make any suggestions or contributions to those persons at your convenience during the weeks ahead. I am sure that your contributions will be appreciated.[1]

Finally, I would like to encourage members of the Section to take special note of developments unfolding at other levels of The Florida Bar. The creation of a Council of Sections, furnishing a forum for communications between Section leadership about matters of common interest, is certainly noteworthy. Of almost equal importance is the attention which Ben Hill and other Bar leaders have devoted to Section concerns and their stated commitments to give full consideration to problems and concerns called to their attention by the Sections. This signals, in my view, a new openness by Bar leadership toward the large numbers of Florida lawyers who identify most strongly with specialized Section activities and underscores the significance which this demographic shift in the legal profession has for Bar policy and governance.

In any event, the problems associated with the Client's Security Fund, the training and orientation of new lawyers, new issues concerning the selection and retention of judges, and the duty of lawyers to facilitate access to the judicial process, whether administrative or otherwise, are not becoming easier or cheaper to solve. Nor are they problems which active Florida attorneys, whether governmental or private, criminal or tort, dirt lawyers or divorce moguls, can afford to ignore or leave to others. On a slow day, or even a not so slow day, when you want to lend a hand, ask not what The Florida Bar can do for you, but you know what . . . *Even* if all you do is administrative law.

[1] Persons interested in the task forces may contact:
1) Administrative Proceedings Involving Local Governmental Agencies—Diane D. Tremor, P.O. Box 1567, Tallahassee, FL 32302, 904/877-6555;
2) Forums and Procedures for Citizen Involvement in Policy Disputes—Richard A. Belz, 3025 West University Avenue, Gainesville, FL 32607, 904/336-2260;
3) Alternative Techniques and Mechanisms for Simplifying Administrative Litigation—P. Michael Ruff; 1230 Apalachee Parkway, Tallahassee, FL 32399-1550, 904/488-9675

COLLEGIAL BODIES & THE APA

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many varied purposes within the executive branch of Florida's state and local governments often find their efforts to serve the public hampered rather than helped by provisions within the APA that are intended to simplify agency action and increase efficiency. The reality of several key provisions of the APA is that they were not written with collegial bodies in mind.

For the purpose of these observations, the term collegial bodies refers to those numerous and varied boards, commissions, and committees scattered throughout the executive branch of state and local government. They usually consist of several political appointees who bring with them some experience or viewpoint that is expected to enhance the responsible functioning of the collegial bodies. These appointees rarely serve on a full time basis and, instead, the collegial bodies' day to day functions are handled by professional administrative staff, often provided by an umbrella agency or other designated government agency. The several appointees to each body actually serve as the collegial head of the agency that is the collegial body.

This is as opposed to the more traditional single-head agency that operates under the direction of a full time, salaried agency head.

One of the most significant differences between the collegial bodies and the single head agencies is the participation in day to day activities of the agency by the head of the agency. Where a department secretary is in the office or doing agency business every day, the appointees, who are as a group the agency head of a collegial body, are rarely involved in agency business on a daily basis. Where a department secretary may seek any necessary advice of staff, make a decision, and then act at a convenient time, the collegial body can make decisions and act only when a quorum of the collegial body is present and all such meetings are subject to the Sunshine and public notice requirements of Florida law.

The APA does not acknowledge or even contemplate this very significant difference between collegial bodies and single head agencies. One aspect of the APA that exemplifies the need for some reasonable accommodation for collegial bodies is the imposition of numerous, integral time frames as set forth in the APA. For collegial bodies that meet on a scheduled basis that may be monthly, bimonthly or even as infrequently as a quarterly basis, APA time frames can be extremely problematic.

The provisions for challenging proposed rules set forth in 120.54(4)(c), Fla. Stat., and existing rules as set forth in 120.56(2), Fla. Stat., require that hearings be held within 30 days of assignment at DOAH. This expedited time frame may require meetings of collegial bodies, in addition to any regular schedule, for the purpose of addressing the rule challenge. However, the short time frame in conjunction with Sunshine and public notice requirements make holding such meetings difficult, if not impossible. The rulemaking requirements of 120.54(11), Fla. Stat., may require collegial bodies to hold meetings in addition to regularly scheduled ~~meetings in~~ order to facilitate compliance with each procedural requirement of rulemaking. Furthermore, the entire process must be completed and the rules filed for adoption within 90 days of the original notice or 21 days after final hearing. Failure to meet the prescribed time frames will result in a forced withdrawal of the proposed rule. Subsection 120.545(2), Fla. Stat., includes a rare acknowledgment of the restraints on collegial bodies. Unfortunately, the 15 day accommodation does not realistically address the needs of collegial bodies to disseminate a Committee objection to the appointees, arrange the meeting necessary to consider the objection, provide the required public notices, hold the meeting, and draft the response or take the decided-upon action. Furthermore, it is almost always incumbent upon the collegial bodies to fully resolve such matters in one meeting because the 45 day time frame will probably not permit noticing and holding multiple meetings on the issue. Again, failure to comply with the time frames results in a forced withdrawal of the proposed rule.

The hearing provisions of 120.57, Fla. Stat., provide further time frame dilemmas for collegial bodies. Petitions for formal hearings must be considered and either granted or denied within 15 days of receipt. Such petitions can be filed at any time without regard to the collegial bodies' scheduled meetings. Pursuant to 120.59, Fla. Stat., collegial bodies are required to render final orders within 90 days of DOAH's submission of a

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

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COLLEGIAL BODIES & THE APA

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recommended order. Hearing officers do not coordinate submission of recommended orders with the meeting schedules of collegial bodies. (They have their own time frames to consider.) Upon receipt of a recommended order, a collegial body must arrange, notice, and hold a meeting to consider the recommended order. However, within the 90 day time frame, the collegial body must also provide the parties an opportunity to file exceptions (usually between 10 and 20 days, as set by rule); prepare and disseminate copies of the entire record, including exceptions, to each appointee; provide required public notice; hold the meeting; prepare the final order, including review and signature by the presiding officer or all appointees (who often do not reside in the same locality as the person preparing the final order); and have the final order filed and mailed to the parties.

For collegial bodies involved in licensing, 120.60, Fla. Stat., contains some particularly harrowing time frames. The 30 day and 90 day requirements of 120.60(2), Fla. Stat., exhibit the total lack of regard given to the fact that collegial agency heads are not available to provide direction and decisions on a day to day basis. Failure to meet these time frames can realistically result in licenses being issued by way of a "deemer" provision to persons or entities that do not meet the minimal statutory requirements for licensure or are otherwise unqualified. *Krakow v. D.P.R.*, 16 FLW 2547 (Fla. 1st DCA 1991). The attendant requirement of providing written notice of agency action on the application for licensure as set forth in 120.60(3), Fla. Stat., does not fall within the time frames. If the collegial body rules on the application within the required time frame, its failure to provide the written notice within 90 days will not result in issuance of a license by the deemer provision. *Sumner v. D.P.R.*, 555 So.2d 919 (Fla. 1st DCA 1990). However, where DOAH has issued a recommended order on licensure, the collegial bodies have only 45 days to rule on the underlying application or lose control of the licensure process by way of the deemer provision. Most of the concerns related to the 90 day time frame addressed above for 120.59, Fla. Stat., are even more burdensome in this shortened 45 day time frame.

These time frames in the APA emphasize the Act's failure to consider the reality that not all agencies function in the same manner. Numerous other aspects of procedures and actions under the APA are significantly more difficult for collegial bodies than for traditional single-head agencies. If the APA is to be re-examined, this oversight should be addressed with some consideration of the realities faced by collegial bodies.

Allen R. Grossman is the Treasurer of the Government Lawyer Section and a member of the Administrative Law and Health Law Sections of The Florida Bar. Allen has been an Assistant Attorney General since 1986 and is currently Deputy Chief of the Administrative Law Section of the Attorney General's Office.

Case Notes

by John A. Radey
Aurell, Radey, Hinkle & Thomas, Tallahassee

The decision in *Scientific Games, Inc. v. Dittler Brothers*, 16 FLW D2046 (Fla. 1st DCA, August 7, 1991) discusses availability of discovery at DOAH as to trade secrets and confidential data. The court held that technical information regarding lottery tickets involved trade secrets, but were not necessary to the resolution of the bid dispute. Therefore, the court quashed the DOAH order requiring full discovery. In addition, the court reviewed DOAH's decision to deny a motion to dismiss after expressing doubt about the court's jurisdiction to review that ruling without a final order; the court's review resulted in a holding that DOAH had not abused its discretion in denying the motion to dismiss.

A challenge to alleged urban sprawl nonrule policies failed in *Home Builders v. DCA*, 16 FLW D2087 (Fla. 1st DCA, August 8, 1991). The court held that competent substantial evidence supported the DOAH determination that specific urban sprawl rule were not now practicable and the alleged

non-rule policies did not meet the definition of a rule found in Section 120.56(16). The court agreed that Section 120.57 adjudication in the context of individual comprehensive plans was appropriate where "DCA will be required to establish its policies by . . . evidence appropriate to the nature of the issues involved and must expose and elucidate its reasons for its discretionary action." *See, also, Florida League of Cities, Inc. v. Administration Commission*, 16 FLW D2269 (Fla. 1st DCA, August 27, 1991)

In another growth management case, *Environmental Coalition v. Broward County*, 16 FLW D2422 (Fla. 1st DCA, September 16, 1991), the court affirmed the DCA final order determining the Broward County Comprehensive Plan to be in compliance with Chapter 163. First, the court observed that the Coalition had not filed exceptions and thereby waived any right to contest the findings of fact made by DOAH and accepted by DCA. The substantive focus of this appeal was whether the plan in question adequately addressed wetlands. The court held that the wetlands map in the plan was adequate under Section 163.3177(6)(d) given a fairly debatable standard. In addition, the court held that the wetlands map was the best available data within the meaning of DCA's rules.

A decision with extremely broad implications regarding *ex parte* communications is *Jennings v. Dade County*, 16 FLW D2059 (Fla. 3rd DCA, August 6, 1991), a case involving a zoning decision by the county commissioners after a lobbyist did what lobbyists do. The specific holding of the court is that an automatic reversal is *not* required by reason of *ex parte* contacts in the context of quasi-judicial proceedings; a reversal, however, would be required "where the complaining party alleges and ultimately proves prejudice." Does this mean that contacts with the cabinet and little cabinet are unlawful? Judge Ferguson's concurring and dissenting separate opinion suggests that the answer is in the affirmative because he states that all quasi-judicial tribunals should comply with the rules applicable to disqualification of judges.

The decision in *Stock v. Department of Banking and Finance*, 16 FLW D2016 (Fla. 5th DCA, August 1, 1991) interprets *Aurora Enterprises. Inc. V. Department of Business Regulation*, 395 So.2d 604 (Fla. 3d DCA 1981) to require vacation of an emergency suspension of a license only where there is a request for immediate hearing that is denied. In *Stock*, an emergency suspension was upheld because the licensee was not entitled to a pre-suspension hearing and the Department had complied with the emergency and non-emergency procedures required by Chapters 120 and 517, Florida Statutes.

Emergency rulemaking authority is discussed in *Golden Rule Ins. Co. v. Department of Insurance*, 16 FLW D2407 (Fla. 1st DCA, September 11, 1991). In that case, the court found that the Department was not authorized to adopt an emergency rule because the reasons for the rule were rooted in Department's failure to act. It was not enough for the Department to cite an adverse administrative ruling, computerization, a large number of filings, and the statute that required quick agency review of filings. Accordingly, the court quashed the rule and declared it invalid.

In the context of a Section 120.57(1) dredge and fill permitting proceeding involving a marina, the court issued a writ of mandamus directed to DOAH in *Collier Development Corporation v. DER and DOAH*, 2nd DCA, No. 91-01573 and -01790, October 18, 1991. The court was faced with a situation where DOAH had refused to consider evidence for due process reasons and because of its interpretation of *1800 Atlantic Developers v. DER*, 552 So.2d 946 (Fla. 1st DCA 1989), *petition for rev. denied*, 562 So.2d 345 (Fla. 1990) and a subsequent order of remand by DER to DOAH for consideration of the evidence. The order of remand was refused by DOAH. The court held that DER's determination that the hearing officer's legal conclusions were incorrect meant that DOAH was required to make findings of fact and conclusions of law consistent with the DER determination. However, the court observed that it was not determining the propriety of DER's determination in the context of this interlocutory-type appeal. But then the court went on to interpret *1800 Atlantic* to require that the hearing officer resolve factual disputes regarding mitigation and observed that the applicant, Collier, was not clearly entitled to a default permit.

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Another case citing *1800 Atlantic* is *Cullen v. Florida Audubon et al.*, 16 FLW D1892 (Fla. 3d DCA, July 23, 1991), where a final order of DER is affirmed. The appellant contended that the order was insufficient because it did not specify what water quality parameters were violated by a proposed marina and contended that the order violated Section 403.92 by not providing a sufficient explanation of why the permit was denied.

In a third marina case, the court in *Coscan Florida, Inc. v. Metropolitan Dade*, 16 FLW D2416 (Fla. 1st DCA, September 16, 1991) approved FLWAC's final denial of development approval under Florida's DRI law. The court discussed the evidence, found it competent and substantial, and affirmed based on *Graham v. Estuary Properties*, 399 So.2d 1374 (Fla. 1981). The court further stated that Chapter 381 did not require, given the record and findings in this case, that the final order delineate the maximum possible development where no reduced scale development was shown to be feasible and stated that it was appropriate for FLWAC to be a party to the appeal.

DER Rule 17-103.170 was correctly invalidated by DOAH according to *DER v. Manasota-88. Inc.*, 16 FLW D2049 (Fla. 1st DCA, August 7, 1991). That rule required payment of 50 cents per page to DER by an appellant for preparation of the record on appeal; the court found no statutory authority for the rule and affirmed DOAH citing Sections 120.52(8)(c) and 120.54(7).

Mann v. Board of Dentistry, 16 FLW D2313 (Fla. 1st DCA, September 4, 1991) vacates the order of the Board of Dentistry which summarily rejected a motion to modify an order of discipline that suspended the appellant from the practice for 10 years. The court rejected the concept that the board was without jurisdiction to modify its previous order and rejected the alternative rationale that the allegations of the motion were insufficient because the board order did not inform appellant as to the reasons why the motion was insufficient.

Dismissal for lack of standing was affirmed in *Braman Cadillac, Inc. v. Department of Highway Safety*, 16 FLW DI955 (Fla. 1st DCA, July 25, 1991). The court narrowly construed Section 320.643(3)(b) to comport with the court's view of what entities the legislature intended to have standing and the agency's interpretation of that provision which was entitled to great weight. The suggestion that Section 120.57 could be read to expand standing was rejected with citation to *Agrico Chemical Co. v. DER*, 406 So.2d 478 (Fla. 2d DCA 1978).

John A. Radey practices with Aurell, Radey, Hinkle & Thomas, Tallahassee, primarily in the areas of health care law and environmental law. He received his B.A. in 1967 from Notre Dame University and his J.D., with honors, from the University of Michigan in 1971.

Minutes
Administrative Law Section
Executive Council Meeting
September 12, 1991
Tallahassee, Florida

Preliminary Matters

Members Present: Gary Stephens, G. Steven Pfeiffer, Stephen T. Maher, Vivian F. Garfein, Willima L. Hyde, Ralf G. Brookes, William R. Dorsey, Jr., M. Catherine Lannon, P. Michael Ruff, Thomas M. Beason, Linda M. Rigot, Betty J. Steffens, Diane D. Tremor, William E. Williams.

Mary F. Smallwood had advised that she had a conflict and was excused.

Peg Griffin and Martin R. Dix were also present.

Minutes: The minutes of the June 28, 1991 Annual Meeting were approved with

the following changes: "Bill Maher" should read "Stephen T. Maher." "Gary Steffens" and "Betty Stephens" should read "Gary Stephens" and "Betty Steffens," respectively. Also, "chairman" should read "chair." The minutes of the June 28, 1991 Executive Council meeting were approved with the foregoing corrections.

Guests

Marty Dix was recognized and invited to speak out of order to give a report on a proposed federal rule on standards of conduct for executive branch employees. The rule, proposed by the Federal Office of Government Ethics, would limit the participation of federal government lawyers in professional associations. Other bar groups have written in opposition to the proposed rule, and Marty asked the the Administrative Law Section also write a letter in opposition. It was moved and seconded that Gary compose and send a letter on behalf of the section before the September 20 deadline for comment. An amendment was accepted that material from Bill Dorsey's memo on the subject also be included in the letter. The motion passed.

Report of the Chair

Gary Stephens proposed the creation of three "think tank" groups of Executive Council and Section members interested in particular areas who would explore issues in three different areas. The first area is dispute resolution with local government entities not covered by Chapter 120. Possible issues in this area include: administrative due process requirements at that level; possible models for dispute resolution at that level; and the possibility of extending Chapter 120 to certain local government proceedings.

The second area is citizen access to administrative dispute resolution. Gary emphasized our need to be responsive and asked whether merely providing forms is enough. Gary described this area as one in which the section could work with Legal Services programs and public interest groups. This think tank will look at the work of ombudsmen, inspectors general, and public counsel for ideas.

The third area is mediation and other dispute resolution strategies. These alternatives are not easily avalable in disputes with government but they have potential worth appropriate for policy and statutory changes. What are the problem areas? How can they be addressed?

Gary asked Executive Council members and all members of the Section to sign up to work on one of these three "think tanks." He also suggested that they publish position papers and bibliographies and publish reports in the newsletter on their work.

The proposal was then discussed.

Gary then appointed individuals within the Section as liaisons to other groups.

Public Utilities Law Committee	Michael Ruff
Health Law Section	Barbara Pankau
Government Lawyers Section	Catherine Lannon
Environmental and Land Use Law Section	Mary Smallwood
Organization of General Counsels	Steven Pfeiffer
Local Government Law Section	Ralf Brookes

Report of the Chair-Elect

Steven Pfeiffer indicated that he wanted to work with the Long Range Planning Committee. He also indicated that he will focus his attention on the Administrative Law Conference.

Report of the Treasurer

Vivian Garfein reported a fund balance of $40,079.00.

Old Business

Status of Membership Records: Due to a mistake made at the Bar, the annual dues statement failed to indicate that Bar members were members of some Sections. Thus, membership in the Sections affected by this error fell as Bar members failed to notice that their membership in the Section had not been extended. The Administrative Law Section was one of the Sections affected by this error. The Bar has offered to send out a letter to those affected at no cost to the Section, to help remedy this error. The chair agreed to prepare such a letter.

Committee Reports

Continuing Legal Education: William Dorsey reported that a November 8 CLE

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program is planned on practice before the Division of Administrative Hearings, 8:00 a.m.—1:00 p.m. in Tallahassee. He also indicated that the Spring program last year lost money and that it is being heavily revised. He also reported on changes being considered and being implemented in CLE programs. Recent changes include the creation of awards for outstanding speakers and a recommended training program for CLE speakers.

Publications: Linda Rigot reported that the Section had 5 columns in the Bar *Journal* and 4 newsletters per year. October 18 is the deadline for the next newsletter.

Legislative: Betty Steffens reported that there will be an early legislative session this year. There should be three members on the committee, but there are vacancies. October 24 is the deadline to submit our legislative priorities to the Board of Governors. There was then discussion on the impact of the recent *Frankel* decision on the future of Bar and Section lobbying.

Long Range Planning: Steven Pfeiffer reported that this committee will soon develop an agenda and proceed.

Administrative Law Conference: William Williams reported that the preparations for the Administrative Law Conference were complete. A large turnout is expected.

Florida Bar/Section Liaison: Stephen Maher reported on recent developments. Much of this report was given during the earlier discussion of the recent *Frankel* decision.

New Business

Proposed Bylaws, Council of Sections: Gary Stephens recommended that the Section adopt bylaws proposed by the Council of Sections and that we agree to be a participating section. It was moved and seconded. After discussion, the motion passed.

Request for Contribution, Committee on Professionalism: After discussion of the request, it was moved and seconded that the request be denied. The motion passed.

Regional "Think Tank" Task Forces: The concept of think tanks was discussed earlier during the report of Chair Stephens. The need to look for opportunities for local involvement was stressed here.

Schedule of Future Meetings: Meetings of the Executive Council will be held in November and January. The November meeting is scheduled for November 7, 1991 at 2:00 p.m. at The Florida Bar if available. The January meeting will be held during the Mid-Year meeting. A preference was expressed for the Friday 9-12 meeting time.

Adjournment: Upon motion and second, the meeting was adjourned.

Respectfully submitted,
Stephen T. Maher
Secretary

Letters to the Editor

This space is available. We welcome your input. Submissions may be sent to:

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Meet the Hearing Officers for the State of Florida Division of Administrative Hearings

by Veronica E. Donnelly
Division of Administrative Hearings, Tallahassee

Currently, there are thirty-one full-time hearing officers within the State of Florida's Division of Administrative Hearings. They conduct formal administrative hearings throughout the state, as required by Chapter 120, Florida Statutes or other law. Due to the Division's single office location in Tallahassee and the increased number of hearing officers, many administrative law practitioners outside of the state capital may have little background information about a particular hearing officer assigned to hear a case. In response to a number of requests for such information and to assist all practitioners, a brief biographical sketch of each hearing officer is provided to introduce members of the Administrative Law Section to State hearing officers they have not yet had the occasion to appear before.

Sharyn L. Smith has been Director of the Division of Administrative Hearings in Tallahassee, Florida since April 1984. She received degrees from the University of Florida, the University of Miami and the University of Miami Law School. Ms. Smith was admitted to The Florida Bar in 1973 and was a Hearing Officer with the Division from 1980 to 1984. Prior to becoming a Hearing Officer, she was an Assistant Attorney General and Staff Director in the Florida House of Representatives.

James W. York graduated from Rollins College with a B.S. degree in Criminal Justice in 1973, and received his J.D. degree from the University of Florida College of Law in 1975. His prior legal work experience is predominately involved with law enforcement and public administration. Mr. York has served as Chief of Police, Orlando, Florida; Commissioner/Executive Director, Florida Department of Law Enforcement; Executive Director, Florida Department of Highway Safety and Motor Vehicles; General Counsel, Florida Sheriff's Association; and Deputy Attorney General. In addition, Mr. York has been in private practice as a partner with Rumberger, Kirk, Caldwell, Cabaniss and Burke, P.A., with emphasis in Insurance and Attorney Malpractice Defense. He has been a member of The Florida Bar since 1976, and is the Assistant Director of the Division of Administrative Hearings. He has been a hearing officer for one and one-half years.

Charles C. Adams graduated from Florida State University with a B.A. degree in Government in 1964 and received his J.D. degree from the University of Florida in 1969. He was admitted to The Florida Bar in 1970. After law school, Mr. Adams was a trial practitioner in civil and criminal law. He worked in both the private and public sector before coming to the Division where he has been a hearing officer for sixteen years.

Donald R. Alexander (Mr. Alexander's biographical sketch was not available by publication deadline).

Claude B. Arrington graduated from the University of the South with a B.A. degree in 1970. He received his J.D. degree in 1973 from Florida State University. He was admitted to The Florida Bar in 1973 and is certified to practice before the U.S. District Court for the Northern District of Florida and the U.S. Supreme Court. He is also a member of The Tallahassee Bar. During his legal career, Mr. Arrington worked as a private practitioner in the areas of Civil and Administrative Law. His governmental law experience includes four years as an assistant public defender on a contract basis and eight years as a school board attorney. Before coming to the Division in April 1989, he was a shareholder in the law firm of Ruden, Barnett, McClosky, Smith, Schuster & Russell, P.A.

Kingdrel N. Ayers graduated from the United States Coast Guard Academy with

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a B.S. degree in Engineering in 1941. He received his J.D. degree (with distinction) in 1951 from George Washington University. He has been admitted to the District of Columbia Bar, and has been a member of The Florida Bar since 1952. Mr. Ayers has sixteen years experience as a DOAH hearing officer, and came to the Division with two and one-half years of hearing officer experience. His prior legal work experience has been predominately in military law as he served thirty years of active duty as an officer in the United States Coast Guard.

Robert T. Benton II received his B.A. degree from John Hopkins University in 1967, his J.D. degree from the University of Florida in 1970, and his LL.M. degree from Harvard in 1971. He was admitted to The Florida Bar in 1970, and is certified to practice before all three U.S. District Courts in Florida as well as the Eleventh Circuit and the U.S. Supreme Court. His professional associations include memberships in The Tallahassee Bar Association and the Administrative and Environmental and Land Use Law Sections of The Florida Bar. Mr. Benton has been a hearing officer with the Division since 1977. His prior legal work experience includes clerkships with the United States District Court, Middle District of Florida, and the Supreme Court of Florida. He has taught law at Boston University and the University of Florida, and has worked as an assistant public defender and a legal services lawyer.

James E. Bradwell received his B.S. degree from Florida A & M University in 1966 and his J.D. degree from Howard University in 1971. He was admitted to The Florida Bar in 1971, and is a member of the National Bar and the Barrister's Association. Mr. Bradwell has been a hearing officer with DOAH for sixteen years. His prior legal work experience includes a clerkship with the Judge's Division of the NLRB and the practice of labor law in Washington D.C. His general work experience before his bar admission was in banking and financial management.

William R. Cave received his undergraduate degree from the University of Florida in 1959 and his J.D. degree from Florida State University in 1971. He was admitted to The Florida Bar in 1972 and is a member of The Tallahassee Bar and the Third Circuit Bar Association. Mr. Cave has been a hearing officer for seven years. His prior legal work experience includes eight years of practice in Tax Law with the Department of Revenue and five and one-half years as a general practitioner in private practice. His general work experience prior to bar admissions includes employment in agriculture farming and timber operations.

Mary Clark received her B.A. degree in 1965 and her J.D. degree in 1971. She was admitted to The Florida Bar in 1972, and is certified to practice in the United States District Courts for the Northern and Southern Districts of Florida as well as the United States Eleventh Circuit. She is also a member of the Florida Government Bar Association. Ms. Clark has been an attorney with the Department of Health and Rehabilitative Services, Assistant General Counsel at the Department of Administration, and General Counsel for the Department of Community Affairs. Her areas of practice included Trial Practice, Governmental and Administrative Law. Prior to her bar admissions, Ms. Clark was a social worker, a principal/teacher at Miccosukee Indian School, and the team administrator of a multi-discipline team, Go Vap Orphanage, Saigon, Vietnam.

Diane Cleavinger received her B.S. in Pre-Law and Psychology (cum laude) in 1973 from Indiana State University. She was awarded her J.D. degree from Florida State University in 1981 with high honors, and was admitted to the Order of the Coif and The Florida Bar in 1981. Ms. Cleavinger has been a hearing officer since January 1988. Her private law practice before DOAH was a general practice in the areas of Criminal and Civil Law. She has extensive jury trial experience and practiced frequently in the administrative law forums. Her general work experience prior to bar admission included law clerkships, horseback riding and horse training as well as employment with Columbia Records.

Don W. Davis received his B.S. in Journalism in 1965 and his J.D. degree from Florida State University in 1969. He has been

admitted to the District of Columbia Bar and was admitted to The Florida Bar in 1970. He is certified to practice before the U.S. Court for the Northern District of Florida, U.S. Court of Appeals Fifth District, U.S. Court of Appeals Eleventh District, and the United States Supreme Court. Mr. Davis has been a hearing officer with DOAH for four years. His prior judicial or hearing officer experience includes six years' service as a county judge and acting circuit judge. His legal work experience includes service as an aide to the Florida House of Representatives, Assistant General Counsel to the State Comptroller, Assistant State Attorney–Eighteenth Judicial Circuit, General Counsel Florida Department of Commerce, and the Game and Fresh Water Fish Commission. His areas of practice included Criminal, Administrative, Environmental and Business International Law. During his general work experience prior to bar admissions, he was a radio announcer and Peace Corps volunteer.

Ella Jane P. Davis received her B.A. degree in 1967 from the University of Maryland, College of Education and her J.D. degree from Florida State University College of Law in 1970. She was admitted to The Florida Bar in 1970 and is certified to practice in the Federal District Court of North Florida, the Fifth Circuit U.S. Court of Appeals and the Supreme Court of the United States. Ms. Davis is a member of the Administrative Law, Workers' Compensation and Trial Lawyers Sections of The Florida Bar. She is also a member of the Florida Government Bar Association, Florida Association of Women Lawyers and Tallahassee Women Lawyers Association. She has been a DOAH hearing officer for seven and one-half years and previously served as a grievance officer for a state agency. Ms. Davis was Florida's first woman Legislative Staff Intern. Her prior legal work experience includes private practice as well as governmental employment as legal counsel for various agencies. Her substantive areas of practice emphasized personal injury, criminal, inverse condemnation, workers' compensation, and state and federal administrative law.

Stephen F. Dean graduated from Florida State University with a B.A. degree in English (History) in 1963, and a J.D. degree in 1970. He was admitted to The Florida Bar in 1971 and is certified to practice before the three United States District Courts in Florida, as well as the United States Court of Appeals for the Fifth and Eleventh Circuits. Mr. Dean is a member of The Florida Bar, Florida Government Bar and The Tallahassee Bar Association. He has been employed as a hearing officer with the Division since March 1975. Before he came to DOAH, Mr. Dean engaged in general law practice and served as an assistant county prosecutor, Assistant General Counsel to the Department of Administration, Division of Retirement, and the Career Service Commission. He has served as counsel to several DPR boards and generally litigated in Federal and State Courts in cases involving employment rights and real property.

Veronica E. Donnelly received her B.A. in English Literature from the University of South Florida in 1972 and her J.D. from Stetson College of Law in 1977. She was admitted to The Florida Bar in 1978, and is certified to practice before the United States District Court-Middle District and the United States Courts of Appeals for the Fifth and Eleventh Circuits. She is a member of the Administrative Law Section of The Florida Bar and the American Bar Association-Administrative Law Section. She has been a hearing officer since January 1988. Ms. Donnelly came to the division with four years of governmental law practice and six years of private law practice as a litigator in civil and criminal courts with emphasis in personal injury defense and criminal defense. Included in her work experience prior to bar admission is employment as a social worker.

William R. Dorsey received his B.A. degree with interdisciplinary high honors in 1974 and his J.D. degree, with honors, in 1977 from the University of Florida. Prior to becoming a hearing officer six and one-half years ago, Mr. Dorsey was the Deputy General Counsel to the State Board of Education from 1982-1985. From 1977-1982 he was an associate with Bedell, Dittman, Devault and Pillans in Jacksonville, Florida. His practice was limited to complex litigation and appellate work. A member of The Florida Bar since 1977, he is also a member of the Tallahassee Bar and the American Bar Association.

Eleanor Mitchell Hunter received her

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B.A. degree in 1968, a Masters of Arts in 1970 and her J.D. degree in 1975. She began her legal career as law clerk with the Florida Supreme Court from 1976-1978. Ms. Hunter then worked as Assistant General Counsel, Office of the Governor, from 1978-1980. In private practice, she was associated with Mahoney, Hadlow and Adams and later with Hopping, Boyd, Green and Sams. Before coming to the Division one year ago, Ms. Hunter was a lobbyist for Anheuser-Busch Companies.

J. Lawrence Johnston received his B.A. degree, *magna cum laude*, Boston College in 1974 and his J.D. degree, with honors, from Florida State University in 1977. He was admitted to The Florida Bar in 1977 and is certified to practice in the U.S. District Court, Northern District as well as U.S. Circuit Court, Fifth and Eleventh Circuits. He is a member of The Tallahassee Bar Association. He has served as a hearing officer for seven and one-half years. His prior legal work experience was mostly in general litigation as an associate and partner in the law firm of Ervin, Varn, Jacobs, Odom & Kitchen in Tallahassee. Mr. Johnston served as a legislative intern in the Florida House of Representatives and interned with the State Attorney's Office, Fifteenth Judicial Circuit prior to his bar admissions.

William J. Kendrick received his B.S. degree in Business and Economics from the University of Tampa in 1964 and his J.D. degree from the University of Miami School of Law, *cum laude* in 1967. After completing his military service as a Captain in the United States Army in 1969, Mr. Kendrick became an associate and partner with Shutts & Bowen in Miami, Florida. He later served as Assistant Attorney General in a trial and appellate practice devoted to the defense of the State of Florida in actions arising from employment with the state. These actions included, but were not limited to, civil rights litigation under state and federal law. In private practice, he maintained an active civil litigation and appellate practice in all federal and state courts, with emphasis in insurance, commercial and real property law.

Diane K. Kiesling received her B.A. degree in 1972 and her J.D. degree in 1976. She was admitted to The Florida Bar in 1977, and is certified to practice in the U.S. District Courts, Northern and Middle District of Florida, and U.S. Circuit Court of Appeal, Eleventh Circuit. Ms. Kiesling has been a hearing officer for eight years. Her legal background includes Administrative Law practice in both the private and public sectors as well as complex litigation in state and federal courts.

Daniel M. Kilbride received his B.A. degree in 1965 from Stetson University and his J.D. degree from Stetson University College of Law in 1974. He attended the Florida Judicial College in 1985 and the National Judicial College in 1986. He was admitted to The Florida Bar in 1974 and is admitted to practice before the United States District Court, Southern District, Eleventh Circuit Court of Appeal, and the United States Supreme Court. His professional associations include the American Bar Association, National Conference of Administrative Law Judges, American Judicature Society (former member Board of Directors) and the Conference of County Judges. Mr. Kilbride has been a hearing officer since 1989. His prior judicial experience includes service as a Judge of the County Court, Indian River County, from 1985-1989. During his judicial term, he was an acting circuit judge, presiding in contested dissolution of marriage cases and other family law matters. He has also served as a prosecuting attorney, assistant city attorney and city attorney. He also has seven years of general practice in the private sector. Prior to his bar admissions, he served as a Captain in the United States Air Force.

Stuart M. Lerner received his B.A. degree in Economics, *magna cum laude*, in 1972 from Queens College (City University of New York) and his J.D. degree, *cum laude*, in 1975 from State University of New York at Buffalo. He has been a member of The Florida Bar since 1975, and has been admitted to practice before the United States District Court, Northern and Middle Districts, United States Court of Appeals for the Fifth and Eleventh Circuits. He has been a hearing officer with the Division for two and one-half years. His prior hearing officer experience includes six years as a hearing officer with

PERC. Mr. Lerner's prior law related employment includes four years as an assistant public defender in charge of appeals, staff attorney for the Florida Public Employees Relations Commission, Assistant General Counsel, Florida Education Association, Associate General Counsel, Florida Department of Commerce, Associate University Attorney, University of Florida and Deputy General Counsel with the Florida Public Employees' Relations Commission. His areas of practice emphasized collective bargaining law, governmental law, appellate law, and the full spectrum of civil law as it relates to state agencies.

Daniel S. Manry, Jr. received his B.A. degree in Journalism in 1968 and his J.D. in 1971 from the University of Florida. He was awarded a Masters of Laws in Taxation from Georgetown University in 1983. A member of The Florida Bar since 1971, Mr. Manry has also been admitted to the Colorado and Washington DC bars. He is a member of the Tax Section and the Administrative Law Section of The Florida Bar. He has been a hearing officer with the Division for three years. His prior legal work experience includes extensive civil and criminal litigation and real estate law. Since 1983, his practice has emphasized tax law. In addition to twelve years of private practice, Mr. Manry has served as a bureau chief with the Department of Revenue, Assistant Attorney General, Department of Legal Affairs, Tax Section and as legal editor for Tax Management, Inc., Bureau of National Affairs.

Robert E. Meale received his B.A. degree from Florida State University in 1973, his J.D. degree from University of Florida in 1976 and his LL.M. from the University of Florida in 1982. He was admitted to The Georgia Bar in 1976, and The Florida Bar in 1977. He has been a DOAH hearing officer for four and one-half years. His prior legal work experience was in the private sector in the areas of Tax, Real Estate, and Estate Planning. Before accepting his position with the Division, he was a partner in the firm of Baker and Hostetler. Mr. Meale's general work experience prior to his bar admissions was in journalism.

J. Stephen Menton received his B.A. degree, *magna cum laude*, from Florida State University in 1977 and his J.D. and M.A. degrees from Duke University in 1981. He has been a hearing officer with the Division since March of 1989. Mr. Menton began his legal career at Smathers and Thompson in Miami, Florida, where he practiced in the areas of commercial litigation, banking and real estate from 1981-1984. From 1984-1986, he worked in the Tallahassee office of Akerman, Senterfitt & Eidson in the areas of commercial litigation, securities, construction litigation as well as administrative and governmental law. He continued working in the same areas from 1986-1989 with Huey, Guilday, Kuersteiner and Tucker.

Joyous D. Parrish received her B.A. degree in English from Furman University in May of 1975 and her J.D. degree from Florida State University in 1977. She has been employed as a hearing officer since March of 1987. From 1985-1987, Ms. Parrish was an Assistant Attorney General assigned to represent the Florida Real Estate Commission. Before she went to work for the Attorney General's Office, Ms. Parrish was in private practice in Brevard County primarily in administrative and governmental law.

Michael M. Parrish graduated from Florida State University with majors in English and Spanish in 1963. He received his legal education at the University of Miami, School of Law, and graduated in 1966. He has been admitted to practice before the following courts: The Florida Bar (1966), The U.S. District Court, Southern District of Florida (1967), The Canal Zone Bar (1970), and the U.S. Circuit Courts of Appeal for the Fifth Circuit (1970) and the Eleventh Circuit (1983). He is a member of The Florida Bar, The Tallahassee Bar Association, the Florida Government Bar Association and Lawyers of Mensa. Mr. Parrish has been a hearing officer with the Division since 1984. Prior to his appointment as a hearing officer, Mr. Parrish practiced in the private sector for eight years and the public sector for five years. In addition, he served as a Commissioner of the Florida Public Employees Relations Commission from August 1977 until January 1982.

Arnold H. Pollock received his B.A. and J.D. degrees from Duke University in 1955 and 1957. He is a member of The Florida Bar and has been admitted to practice be-

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fore the Southern and Middle United States District Courts, The United States Supreme Court, and the United States Court of Military Appeals. Mr. Pollock has been a hearing officer since November 1982. Prior to DOAH, Mr. Pollock was certified and sat as Military Judge for General Courts Martial from 1961-1982. His prior legal work experience includes the private practice of law 1957-1958; 1960-1961; Judge Advocate, United States Air Force, 1958-1960; 1960-1982, from which he retired in the rank of Colonel.

Bill Quattlebaum was awarded a B.S. degree in Advertising and Communications in 1975 and his J.D. in 1978 from the University of Florida. He was admitted to The Florida Bar in 1979 and has been a hearing officer with the Division since January 1988. Prior to becoming a hearing officer, Mr. Quattlebaum was an attorney for the Department of Insurance and the Florida House of Representatives. His general work experience prior to his bar admissions was in public relations and retailing.

Linda M. Rigot graduated from the University of Miami with a B.A. degree (majors in English and Secondary Education) in 1966 and a J.D. degree, *cum laude*, in 1969. She served as a research aide for the Attorney General's Office (1968), as a law clerk to the Honorable Joe Eaton, formerly Chief Judge of the United States District Court for the Southern District of Florida (1969-1971), and as an Assistant County Attorney for Metropolitan Dade County, Florida, (1971-1974). She practiced with Brickman, Male & Bloom, 1974-1975 and with Ress, Gomez, Rosenberg & Holland, P.A., 1975-1980 with emphasis in the areas of family law, registered general practice, and trial practice under The Florida Bar Designation Plan. She has been a hearing officer with the Division since January 1980. A member of the Executive Council of the Administrative Law Section since June 1989, she currently serves as the Chair of the Publications Committee. She is a member of The Florida Bar.

P. Michael Ruff received his J.D. degree in 1971. He is a member of the Florida Bar and is certified to practice before the U.S. District Court for the Northern District of Florida. Mr. Ruff is also a member of The Tallahassee Bar Association. In addition to his eleven and one-half years as a hearing officer, Mr. Ruff previously served as a hearing examiner for the Public Service Commission. His private practice was a general civil practice that emphasized worker's compensation and regulated industries law. His work in the public sector was in the area of workers compensation.

Larry J. Sartin graduated from Florida State University with a B.S. degree in Accounting in 1967, and received his J.D. degree from Florida State University College of Law in 1972. In 1976, he was awarded an LL.M. degree in Taxation from the University of Florida College of Law. He has been a hearing officer with the Division for seven and one-half years. Before coming to DOAH, Mr. Sartin was a research assistant for the Supreme Court of Florida, a private practitioner in the area of Tax Law, and Assistant General Counsel for the Department of Revenue.

Why Inmates Should Be Exempted from Rule Challenges

by Perri M. King
Department of Corrections, Tallahassee

The proposed amendment to §120.52(12)(d), F.S., will exempt inmates from obtaining or participating in rule challenge proceedings under §120.54(4) or (9), F.S., or §120.56, F.S., and from obtaining appellate review of any agency action. The need for this amendment has been brought about due to a substantial increase in the filing of rule challenges by inmates and the misuse and abuse of the rule challenge process by inmates.

The only appropriate challenge to a proposed or existing rule which may be brought before the Division of Administrative Hearings is a challenge on the grounds that a rule is an invalid exercise of delegated authority. The Division has no jurisdiction to evaluate an agency's interpretation or application of a valid rule. The vast majority of rule challenges brought by inmates attempt to have the Division address individual complaints regarding the application of a rule in a particular situation.

It has become common for inmates to abuse the discovery process in rule challenges by filing numerous interrogatories and requests for admissions, the content of which are irrelevant, vague, or repetitious. Substantial staff and attorney time must be spent responding to these requests.

The rule challenge procedures and hearings are costly in terms of time and money for the Department of Corrections, the Attorney General's Office, and the Division of Administrative Hearings. These challenges serve no productive purpose as inmates are unable to obtain the relief desired through this process.

Inmates already have existing avenues through which to have individual complaints concerning rules addressed. They may utilize the inmate grievance procedure, file with the agency §120.54(5) petitions to initiate rulemaking, and they are allowed input into the rule promulgation process through the submission of written comments to the agency pursuant to §120.54(3), F.S. Inmates are also able to obtain redress through the circuit and federal courts.

The goal of the proposed legislation is to restrict forum shopping by inmates by directing them to the proper procedures for addressing legitimate concerns, and to put an end to the unnecessary and costly abuse of the rule challenge process.

Perri M. King is Assistant General Counsel for the Department of Corrections. She has been a member of The Florida Bar since 1986.

APA Back on the Carving Table

by Betty J. Steffens
McFarlain, Sternstein, Wiley & Cassedy, Tallahassee

The 1992 Legislative Session will be convened January and February, 1992, due to the reapportionment issues. As you will recall, when the 1991 Session came to a halt, the Legislature had passed House Bill 1879 which embodied the two substantive areas of indexing of agency orders and new legislation governing incipient policy. The effective date of this bill is March 1, 1992. The Governor seriously considered vetoing the bill and after some discussions with the sponsors of the bill, allowed the bill to become law without his signature. Immediately after this event, the letter dated August 14, 1991, was sent to the current Committee Chairman of the House and Senate Governmental Operations Committee, respectfully, from the Lieutenant Governor, Buddy MacKay. Ironically, Buddy MacKay was Chairman of the House Governmental Operations Committee when the Administrative Procedures Act in its current form passed the Legislature. As you will see below, the Lieutenant Governor has set the APA back on the carving table for the Legislature in the 1992 Session. The Governor's Office takes the position that the current rulemaking process is so extremely cumbersome that we are headed towards a "blow up." The entire text of the Lieutenant Governor's letter is printed on the following page.

Betty J. Steffens practices administrative and government law and land use and environmental law with McFarlain, Sternstein, Wiley and Cassedy in Tallahassee. She received her B.S. from the University of Kansas in 1972 and her J.D. from Florida State University in 1975. Ms. Steffens currently serves on the Executive Council of the Administrative Law Section of The Florida Bar.

State of Florida

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

LAWTON CHILES
Governor

August 14, 1991

The Honorable Mary Figg
11814-B North 56th Street
Temple Terrace, FL 33617

Dear Mary:

Thank you for the opprotunity to present the proposals of the Governor's Office for revision of the Florida Administrative Procedure Act. We have met with appropriate staff of all of our agencies and are of one voice in recommending the following changes.

1. **Repeal §120.54(4), Florida Statutes.**
   This is the provision which allows any substantially affected party to challenge the validity of a proposed rule. This would not affect the ability to challenge a promulgated rule pursuant to §120.56. It would not necessarily preclude the challenge of a proposed rule if the draw-out provisions of §120.54(17) remain intact.

   The right to challenge a *proposed* rule is not an integral step in the rulemaking process. Florida is probably the only jurisdiction where a proposed rule can be challenged. It is not uncommon that a proposed rule is challenged solely for delay or to gain more leverage in negotiations. This section currently allows one private litigant to tie up a rule that affects many.

2. **Repeal the requirement for an economic impact statement as provided in §120.54(1).**
   The economic impact statement provides little benefit and is time-consuming and often expensive to prepare. Our general counsels could come up with no case where a rule was challenged, at least successfully, based on the economic impact of a rule, but rather they are challenged based on the validity and completeness of the economic data set out in the statement. Clearly, those affected by a rule are in a far better position to determine the economic impact of a rule on themselves than is the agency. This provision appears to provide more for an avenue for invalidation of a rule on a technicality than it provides for any meaningful assistance to the public.

3. **Provide for application of the harmless error doctrine with regard to rule challenges.**
   If there is an error in procedure, it should be viewed like a procedural error in other cases, i.e., if the error is harmless it should not invalidate the rule. Strict scrutiny of rulemaking procedures is a result of adopting federal case law to interpret Florida's unique Administrative Procedures Act.

4. **Limit standing to challenge a rule, which challenge is based upon the supporting documents (minority and small business impact statement, statement of facts and circumstances, federal comparison statement, summary of the rule, or, if it exists, economic impact statement), to any party**

that can demonstrate it is substantially affected by the adequacy of the document upon which it is basing its challenge.
Cases have arisen where large corporations or non-minorities have challenged a rule based on the adequacy of the minority and small business impact statement. Adequacy of the economic impact statement is challenged even though the statement in no manner adversely affects the party making the challenge.

5. **Except prisoners as "parties" entitled to challenge rules.**
Section 120.52(12), F.S. specifically grants the right to prisoners to challenge rules. Prisoner rule challenges comprise 25% of all rule challenges, costing large sums and draining employee and other resources. There is established a grievance procedure for prisoners, as well as access to circuit court and federal court.

6. **The Joint Administrative Procedures Committee (JAPC) should be precluded from filing an objection if its objection was first raised after six months from the time the rule became effective. It is requested that the JAPC work with the agencies to develop standards of review, ("rules").**

7. **Refine the definition of a "rule" to clarify that agency statements that do not create legal rights or require compliance in their own right are not rules.**
When legal rights are treated, or when compliance with an agency statement is required, formal rulemaking should be initiated. However, when statements are developed for an agency's own use, such as guidelines for its employees to follow in interpreting or implementing an agency's formal rules or statutes, formal rulemaking should not be required since the agency will not be relying upon such statements when taking agency action, but rather will rely upon its formal rules or directly upon a statute itself. It is presumed that this is the intention of the Legislature, but in light of the language in this past year's bill, clarification is important.

8. **When a rule references a specific state statute or federal statute, rule or guideline, it should be deemed to include the most current version of that law.**
Many state programs are state-operated federal programs and are required to comport with federal guidelines. These can change by the month and appear to require the state agency to repromulgate its rule every time the federal guidelines change. By the same token, many state statutes change on a yearly basis and it is the position of JAPC that rules referring to these statutes must be promulgated anew.

It is our intention to forthwith prepare recommended language to effectuate these proposals and we look forward to working closely with you and your staff on this piece of legislation.

Sincerely,

Buddy MacKay

Ed. note: This is a reproduction of a copy of the actual letter received by Ms. Figg.

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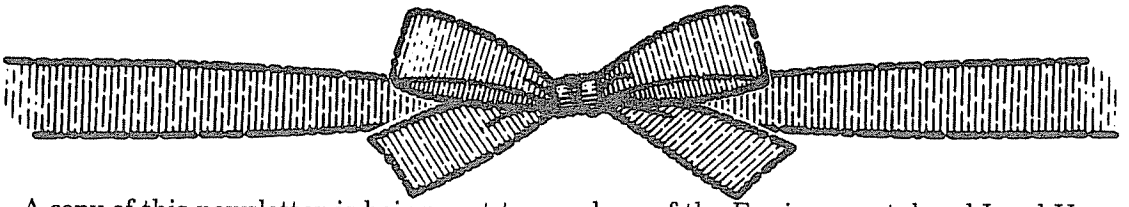

A copy of this newsletter is being sent to members of the Environmental and Land Use Law, Government Lawyer, Health Law and Local Government Law Sections. Since membership in the Administrative Law Section will ensure that you receive future copies, a membership application is printed below.

On behalf of the Executive Council of the Administrative Law Section, Happy Holidays to you and yours.

—Linda M. Rigot, Chair
Publications Committee

Administrative Law Section
Membership Application

This is a special invitation for you to become a member of the Administrative Law Section of The Florida Bar. Membership in this section will provide you with stimulating and informative ideas. It will keep you informed on new developments in the field of administrative law. As a section member, you will meet with lawyers sharing similar interests and problems and work with them in forwarding the public and professional needs of the Bar.

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