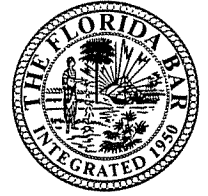

ADMINISTRATIVE LAW SECTION NEWSLETTER



Vol. XII, No. 3

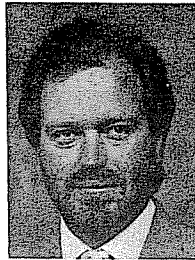
M. Catherine Lannon, Editor

February 1991

Chairman's Column

Indexing Agency Orders

by William L. Hyde



In my September 1990 Chairman's Column entitled "Rulemaking Redux," I lamented the demise of administrative rulemaking by Florida's agencies. An essential element of my lament was and is that the failure to engage in meaningful rule making often deprives the public of meaningful access to that agency's policies and practices. This lack of access, however, is not merely confined to a failure to engage in meaningful rulemaking.

Chapter 120 has long provided that each agency shall make available for public inspection "all agency orders" and "a current subject matter index." §120.53(2)(b) and (c), Fla. Stat. (1989). Obviously, a person inspecting such agency orders is entitled to make copies of these orders. Furthermore, Chapter 120 permits, but does not require, the agency to comply with these requirements by designating an official reporter to publish the orders and adjudications issued by the agency, §120.53(4), Fla. Stat. (1989), and the publication most often used to publish these orders is the *Florida Administrative Law Reporter*, otherwise known as the F.A.L.R.

These statutory requirements, unfortunately, are all too often honored in the breach. Some agencies, for budgetary or other reasons, simply do not maintain an index of their agency orders. Other agencies may maintain some form of an index but that form is frequently indecipherable to anyone outside of the agency. For example, one agency with

which I am quite familiar maintains an index of its orders by counties. There is no subject matter index, there is no effective means of determining how that agency, which extensively employs "non-rule policy" in its deliberations, has made its final permitting determinations, and thus no way to determine whether there is any consistency in that agency's determinations.

Additionally, while it is true that many agencies publish their final orders rendered pursuant to a Section 120.57 formal or informal administrative proceeding, those orders are only a relatively small proportion of the agency's final agency actions. Section 120.52(11) defines "order" as follows:

"Order" means a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form. An agency decision shall be final when reduced to writing and filed

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with the person designated by the agency as clerk. The clerk shall indicate the date of filing on the order. . .

Numerous agencies obviously engage in licensing and permitting decisions. Those permitting and licensing determinations, however, rarely result in a formal or informal administrative proceeding and a published order. Rather, a final agency determination is made, and the person or persons affected by that final agency determination do not petition for a hearing. Agencies also issue declaratory statements. §120.565, Fla. Stat. (1989). All of these are "orders" within the meaning of Section 120.52(1).

Nevertheless, the agency in the course of that administrative review process or declaratory statement may establish and often does establish important policies of broad-ranging effect. On more than one occasion I have been advised by agency personnel that a policy, previously unknown to me, had been a well-established policy for some time. When I queried as to whether that policy was explicated in any published order or indexed order, the agency personnel have candidly admitted that no, it was not, but it was in an agency order. There is not the slightest bit of embarrassment in such admissions. Clearly, such actions are a breach of and clearly contrary to the intent of Chapter 120's indexing requirement for agency orders.

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

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Tallahassee
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Tallahassee

Statements or expressions of opinion or comments appearing herein are those of the editors and contributors and not of The Florida Bar or the Section.

I have taken such incidents to heart. Now, when I am asked by a client to help him or her get a permit from a particular agency, I make a preliminary inquiry with that agency to determine whether there are any unpublished agency orders or policies which may impact upon my client's interest. On more than one occasion this practice has enabled me and my client to confront early on troublesome agency policies and dispose of them.

Because my administrative practice is relatively narrow, i.e., environmental and land use law, and I am especially persistent in staying abreast of administrative agency developments in such areas, I am generally aware of new and emerging agency policies that are unpublished and, in many cases, unwritten. That familiarity, I suppose, is what generates a considerable amount of business for me and other Tallahassee-based attorneys, and for that I am indeed grateful. However, as I opined in my September 1990 column, it should not be necessary for persons affected by an agency's policies to have to retain the assistance of Tallahassee counsel to know the nuances, or even existence of, an agency's policies, whether they are in unwritten form or, worse yet, in an order for which there is no meaningful public access because it is not indexed and otherwise available to the average person.

Just as administrative rules perform an important due process function in their own right by providing affected persons, in the *Florida Administrative Code*, with readily accessible published notice of an agency's policies, so too do agency orders that have been comprehensively and understandably indexed and otherwise made available. Assuming that there is some continued validity in an agency's continuing to employ nonrule policy in accordance with the dictates of *McDonald v. Department of Banking and Finance*, 346 So. 2d 569 (Fla. 1st DCA 1977), and its progeny, proper and meaningful indexing of and access to an agency's orders must be insured. An affected person should not have to endure the rigors and expense of administrative review of a permit or license application pursuant to Section 120.59 or a Section 120.57 administrative proceeding just to find out what an agency's policy is or whether that policy is justified by the facts. As I also opined in my September column, affected persons should know, at the front end of whatever the administrative process is (i.e., licensing, permitting, license revocation, etc.), just what

the agency policy is so that they may govern themselves accordingly.

In all fairness, I should note that this situation is not confined to Florida's administrative agencies. In a recent article advocating the preference of published rules over adjudicated orders, one noted scholar has observed:

State agency case law . . . is almost never published and is usually available only in the files of the agency. Even the legal right to copy those decisions contained in agency files cannot overcome this indifference and the practical problems is causes for regulated persons seeking to ascertain the precise contents of the law to which they must conform.

Bonfield, *Mandating State Agency Lawmaking by Rule*, 2 B.Y.U. J. Pub. L. 161, 171 (1988). [I am indebted to Jon Rossman, Executive Director of the Advocacy Center for Persons with Disabilities, Inc., for this quote.]

Such problems may be pandemic; however, our Florida APA was specifically designed to strike a balance between an agency's legitimate exercise of its statutory powers and the protection of affected persons from arbitrary or capricious agency action and "shadow government."

Accordingly, proper and meaningful indexing of and access to administrative orders, regardless of whether they have been subject to Section 120.57's rigors, must occupy as important a place in Florida's APA as do rules and rulemakings. Just as rules and rulemaking, indexing and access to orders must be at the heart of Florida's APA. It is therefore my hope that Florida's legislators, in their 1991 session(s), revisit this issue and put some teeth into Section 120.53(2)(b) and (c), Florida Statutes. Otherwise, we shall continue down the slippery slope to "shadow government" which our modern APA was specifically crafted to avoid.

Free Transcripts for Indigents

by John J. Rimes III

The issue in the *Smith, Kelly* and *Harris* case¹ was whether or not indigent appellants in non-criminal administrative proceedings are entitled to have transcripts provided to them at no cost when they take appeals to the appropriate court from administrative proceedings. The *Gretz* case² involved a question of whether claimants in unemployment compensation cases could be charged a fee by the Unemployment Appeals Commission for the provision of a transcript of the agency hearing when an appeal is taken from a denial of unemployment benefits. All of the cases came before the Supreme Court based on certification from the applicable District Court of Appeal as being questions of great public importance. In *Gretz*, the Court determined that since the agency was required under Section 120.57(1)(b)(7), F.S. to "accurately and completely preserve all testimony in the proceeding, and, on the request of any party it shall make a full or partial transcript available at no more than any cost" and the provisions of Section 443.041(2) (a), F.S., prohibited the Commission or Division or their representatives from charging fees of any kind in any proceeding before the Division of Unemployment Compensation, the rules that

impose fees for copies of transcripts and the record on appeal are invalid.

The Court reasoned that, while Section 120.57(1)(b)(7), F.S., implies that an agency may, in fact, charge the actual cost of preparing a transcript when requested by a party appealing an administrative decision, the provisions of Section 443.041(2) (a), F.S., would control as a more specific statement of legislative position than the general requirement contained in Chapter 120. The Court also found under the rationale of the *Smith* case, decided contemporaneously with the *Gretz* case, that, since *Gretz* had been found to be indigent, she would have been entitled to free transcripts anyway.

Smith, Kelly and *Harris* involved challenges to various state agencies' determination that indigents were not entitled under either the Florida Constitution or the provisions of Section 57.081, F.S., to free transcripts of administrative proceedings from which they desire to take an appeal to the appropriate appellate court. The Court split on the issue of whether or not there was a constitutional right under the provisions of Article I, Section 21 of the Florida Constitution (access to courts) to transcripts at no cost for any indigent seeking to appeal from an administrative proceeding. A majority of the Court, Justices

continued . . .

FREE TRANSCRIPTS

from preceding page

Overton, Shaw, Grimes and McDonald concurred that there was no constitutional right to free transcripts. (Justice McDonald dissented from the result, finding neither a statutory nor a constitutional right to free transcripts.)

The majority essentially applied the rationale of *Ortwein vs. Schwab*, 410 U.S. 656 (1973), and the rationale of the Fourth District Court of Appeal in *Harrell vs. Department of Health and Rehabilitative Services*, 361 So.2d 715 (Fla. 4th DCA 1978), in finding that Florida's constitutional access to Courts provision does not mandate the provision of free transcripts to indigents in appeals from administrative proceedings any more than such is mandated in civil court proceedings.

The dissenters, justices Ehrlich, Kogan and Barkett, opined that an administrative proceeding is an accepted alternative method of dispute resolution for purposes of satisfying the Florida access to courts requirement only insofar as the final decision of the administrative agency is reviewable by the courts. Thus, the failure to provide transcripts at no cost to indigents in appeals from administrative proceedings is inherently different than not requiring the provision of transcripts in civil court proceedings, since the first time there is access to a court in an administrative proceeding is on appeal.

After disposing of the constitutional issue, six members of the court agreed that the statutory scheme set forth in Section 57.081, F.S., and Section 120.57(1)(b)(7), F.S., mandated that, as a matter of statutory construction, all indigents be provided with transcripts at no cost when they take appeals from administrative proceedings to which they are a party. Section 57.081, F.S. mandates that "[a]ny indigent person who is a party or intervenor in any judicial or administrative agency proceeding or who initiates such a proceeding, shall receive the services of the courts, sheriffs, and clerks, with respect to such proceedings, without charge." [Emphasis added] The Court recognized that the clear language of the 1980 amendment to Section 57.081, F.S., was to provide the waiver of certain costs to indigent persons involved in administrative proceedings, as well as in civil proceedings. After accepting that the Legislative history was inconclusive as to whether

or not the cost of transcripts was intended to be included in those activities for which no cost could be required of indigents, the Court went on to analyze the impact of Section 120.57(1)(b)(7), F.S., on the cost waiver provisions of Section 57.081, F.S.

The Court reasoned that since Section 120.57(1)(b)(7), F.S., requires administrative agencies to record all proceedings and to make transcripts available at no more than cost, *ipso facto*, the Legislature made the provisions of transcripts a "service" which must be provided to indigents without charge. It is interesting to note, however, that Section 120.57(1)(b)(7), F.S. does not make the recording of testimony, or the preparation of transcripts a duty of the clerk of the agency, which would appear to be a prerequisite for the provisions of Section 57.081(1), F.S. to be applicable. It is apparent that the majority of the Court has determined that the appropriate statutory construction of Section 57.081(1), F.S., as it applies to administrative agencies, is not limited only to services which are traditionally performed by a court clerk, but may also include any duties which the agency is required to perform in preparing or in aid of preparing a record of an administrative proceeding. As such, any of those activities, which may or may not be limited to the preparation of transcripts from testimony which is required to be recorded by the agency, could be considered as services to which indigents are entitled without charge.

The Court recognized that its determination would have a fiscal impact upon administrative agencies and that the requirement to furnish transcripts went beyond requirements mandated to clerks of court in civil proceedings. However, the Court determined that that was a Legislative decision, and it was not within the purview of the Court to question the Legislature's wisdom.

Footnotes

¹ *Smith v. Department of Health and Rehabilitative Services; Kelly v. Department of Health and Rehabilitative Services; Harris v. Department of Corrections (consolidated)*, Fla. S.Ct. Case No. 69793 (Opinion issued January 3, 1991) [16 F.L.W. S40].

² *Gretz v. Florida Unemployment Appeals Commission*, Fla. S.Ct. Case No. 72,137 (Opinion issued January 3, 1991) [16 F.L.W. S50].

Bob Benton, Renaissance Man

by Betty Steffens

The next time you're in Tanzania take a good look at the fellow next to you and see if it's Bob Benton. When Bob is not being a full time hearing officer, he has been found climbing Mt. Kilimanjaro, ice climbing the mountains of Maine or sailing across the Gulf of Mexico from Florida to Guatemala. Before you decide that Bob has read one too many Hemingway stories, be aware that this is a man who graduated from John Hopkins majoring in the classics. While studying linguistics, Bob also learned Latin, Greek, German, Sanskrit and Arabic. These tools (not his J.D. from the University of Florida or his LL.M. from Harvard) have enabled Benton to author some of the better administrative orders.

Benton's navigational skills surely helped him locate the state's coastal construction control line in his recommended order on that subject. Most of us would cringe at the thought of listening to hours of testimony from biologists and ichthyologists expanding on the biological characteristics of the *Sciaenops ocellatus*. Benton, however, unflinchingly sliced to the meat of the issue and wrote the findings of facts which ultimately lead to this state's Rule against Prudhomme, otherwise

known as the redfish rule. Remember this the next time you are in a restaurant and are told the famous blackened redfish dish is out of season.

Most hearing officers' works of great research go unnoticed. For those of you who followed the Supreme Court opinions issued in early January of 1991, you will see that two decisions came out on the same day which touch on the right to a free transcript of an agency hearing. The lead case is *Smith v. Department of Health and Rehabilitative Services*, dealing with rights of indigents and agencies' obligations to provide transcripts at no cost.

The second case is an unemployment compensation rule challenge decision, in which "the trier facts" was Benton. Benton compiled a compendium of decisions from relevant jurisdictions dealing with indigent rights to transcripts in administrative forums which were included in his final order in the rule challenge. While the *Smith* decision will be heralded for its significance in administrative law, one must suspect that the Supremes had the great research neatly provided for them.

Minutes

Administrative Law Section Executive Council Meeting

Friday, November 8, 1990
Tallahassee, Florida

Preliminary Matters

Members Present: William L. Hyde, Charles Gary Stephens, G. Steven Pfeiffer, Linda M. Rigot, Betty J. Steffens, Diane D. Tremor, O'Bannon M. Cook, William R. Dorsey, Jr., Vivian F. Garfein, M. Catherine Lannon.

Stephen T. Maher and Walter S. Crumbley had contacted the Chairman, and were excused.

Also present was Peg Griffin.

Minutes: The minutes of the September 7, 1990, meeting of the Executive Council were approved.

Chairman's Report

The Chairman deferred his report, and delivered it in connection with specific committee reports.

Committee Reports

Budget Committee: The Chairman presented the Budget Committee Report in the absence of the Treasurer. The Section enjoys a healthy fund balance of \$35,645.00, which reflects a continuing excess of revenues over expenditures.

continued . . .

MINUTES

from preceding page

Continuing Legal Education Committee: Committee Chairman Vivian Garfein reported that the October 14 seminar on procedures at the Division of Administrative Hearings was a substantive and fiscal success. The program received high ratings from participants, and with good attendance, generated income for the Section. Ms. Garfein reported that the next seminar, which will treat specific agency procedures, is scheduled for April 19, 1991. She led a discussion on future seminar topics. The Chairman commended Ms. Garfein on her term as Committee Chairman. O'Bannon Cook was appointed to be the next Chairman.

There was a brief discussion regarding the next Administrative Law Conference. The Executive Council agreed that the Conference should be scheduled for September or October, 1991.

Legislation Committee: Committee Chairman Betty Steffens reported that two bills from the last Legislative Session, the Senate Governmental Operations Committee Bill dealing with indexing of agency orders, and the House of Representatives Governmental Operations Committee Bill dealing with agency rulemaking requirements, are likely to be prime matters for Legislative attention during the 1991 session. Ms. Steffens moved that the Executive Council actively support the Indexing Bill, and that the issue of whether the Bar would lobby to support it be presented to the Board of Governors of the Bar for approval. The motion was seconded by Gary Stephens, and was adopted with all members present voting in favor.

Newsletter Committee: Committee Chairman Catherine Lannon reported on current topics and authors and solicited ideas for future topics and writers.

Television Pilot Committee: A Motion to disband the Television Pilot Committee had been deferred from the last meeting. The matter was withdrawn from the table, and Steve Pfeiffer moved to disband the Committee. Gary Stephens seconded the motion, which passed with all members present voting in favor.

Long Range Planning Committee: Committee Chairman Gary Stephens reported on a meeting of the Committee that was conducted the day before. He led a discussion of

the Section's mission statement; the Section's constituency, program areas, and goals; and the relationship of the Section to the Division of Administrative Hearings, the Joint Administrative Procedures Committee, local governments, and Federal agencies. The Section's mission statement that is published in the Florida Bar Journal was discussed. The need to work closely with the newly formed Government Lawyer's Section in order to achieve broad participation in the Administrative Law Section on the part of public sector attorneys was acknowledged. There appeared to be a consensus that the Section's role regarding Federal administrative law, and local government law is limited because there are specific national or Florida Bar sections that relate directly to those issues.

Bar Journal Committee: Committee Chairman Bill Dorsey reported that future *Journal* articles will be written by Professor Pat Dore on "draw out" proceedings, and by David Nam on legislative proposals of the House of Representatives Committee on Governmental Operations. Mr. Dorsey led a discussion on requirements that the Bar has imposed upon authors to indemnify the Bar in the event that the Bar is sued for copyright violation on account of an article. The fear that these impositions might render it more difficult to obtain authors for the Section's column in the *Journal* was discussed. Chairman Hyde agreed to raise this issue with the Section's Bar liaison, and Mr. Dorsey agreed to raise the issue with editors of other sections' articles.

New Business

Section Directory: Chairman Hyde led a discussion of the positive and negative aspects of the Section's Directory of Members. Betty Steffens, Vivian Garfein and Catherine Lannon were appointed to a committee to review the Directory and to make recommendations to the Executive Council at its next meeting.

Budget: Chairman Hyde led a discussion of the Section's proposed budget for the next fiscal year. He noted that a policy is in place to pay for travel of Executive Council members to meetings in the event that it is requested.

Vacancy on Council: Chairman Hyde reported that Mark Dresnick had submitted his resignation from the Executive Council. The Chairman agreed to place an advertisement regarding the vacancy in the "Florida Bar News" and deferred consideration of a suc-

cessor until the next Council meeting.

Next Meeting: Chairman Hyde led a discussion as to the date and location of the next Council meeting. It was decided that in order to promote geographic diversity on the Council, the next meeting would be sched-

uled to coincide with the mid-year meeting of The Florida Bar on January 25, 1991, in Miami.

Adjournment: Upon motion of Betty Steffens and second by Vivian Garfein, the meeting was adjourned.

Minutes

Administrative Law Section Executive Council Meeting

Friday, January 25, 1991
Miami, Florida

Preliminary Matters

Members Present: William L. Hyde, Charles Gary Stephens, G. Steven Pfeiffer, Stephen T. Maher, Walter S. Crumbley, Betty J. Steffens, O'Bannon Cook, Vivian F. Garfein, M. Catherine Lannon.

Linda M. Rigot, Diane D. Tremor, and William R. Dorsey had contacted the Chairman, and were excused.

Also present was Peg Griffin.

Minutes: The minutes of the November 8, 1990, meeting of the Executive Council were approved.

Guests: Alan T. Dimond and Terry Russell, candidates for President of the Florida Bar, visited the meeting and presented their platforms. Mr. Dimond advocated section autonomy within the Bar. He noted that the integrated Bar, with mandatory membership, is limited regarding positions that it can take before the legislature, and in judicial proceedings. He feels that sections will have more ability to present their views regarding legislation and to participate in legal proceedings because their membership is voluntary. Mr. Dimond also addressed specific action the Board of Governors had taken with regard to issues that were being discussed by members of the Executive Council.

Mr. Russell also advocated section autonomy. He recognized the ability of sections to respond more directly to issues confronting their membership. In addition, he favors increased action to prevent unauthorized practice of law; and supporting goals to make lawyers and the courts more accessible to all citizens, including those who cannot afford legal services by encouraging voluntary *pro bono* efforts.

Mike Tartaglia, the Programs Division Di-

rector of the Florida Bar also visited the meeting. He presented remarks regarding the Continuing Legal Education Committee. These remarks are referenced below.

Chairman's Report

The Chairman presented his report in comments that he made regarding specific agenda items.

Old Business

Ms. Steffens led a discussion regarding what might be included in an updated Section Directory. She suggested that names, addresses, telephone numbers and "FAX" numbers of agency clerk's would be a helpful addition. The Council concurred with this suggestion and recommended that all members, whether they respond to questionnaires or not, be included in the Directory. If areas of specialty are to be included, those who respond to a questionnaire could have designated areas set out in the Directory. Mr. Crumbley moved that the Report be accepted, and that the cost of the Directory and its format be determined by the Directory Committee and discussed at the next Council meeting. The motion was seconded by Ms. Garfein and passed unanimously.

Committee Reports

Budget Committee: Mr. Maher presented the Budget Committee Report. He noted that revenues from CLE presentations had exceeded projections, and that the Section's fund balance has been increasing. He suggested that it may be appropriate to explore worthwhile projects or programs that could be supported with the fund balance. He recommended that the Executive Council brain-

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MINUTES

from preceding page

storm the issue at its next meeting. Mr. Cook noted that there are problems with carrying too large a surplus such as the prospect that the Bar might, in its zest for sources of funds, look to large section fund balances. Council members discussed possible projects. Ms. Lannon suggested that the Section might, with the Florida Association of Women Attorneys, cosponsor a prominent speaker for a luncheon at the Bar Convention. Mr. Crumbley recommended several speakers that might be appropriate for that or other symposiums. The Council concurred with the suggestion that the matter be a subject of discussion at the next meeting.

Administrative Law Conference: Mr. Maher advised the Council that the *Florida State University Law Review* will be publishing five papers from last year's Conference as a symposium issue. It should be published in March. The Section's \$1,000 expenditure will enable the purchase of 200 copies to be distributed to speakers and important contributors to the process. The Council agreed that the next Conference should be scheduled for September 13 and 14, 1991, in Tallahassee to coincide with a home football game at Florida State University. Mr. Hyde and Mr. Stephens agreed to meet within two weeks to decide upon a chairman.

Continuing Legal Education Committee: Ms. Garfein noted that the Division of Administrative Hearings seminar drew a larger attendance and generated more revenue than anticipated. Mr. Cook discussed the upcoming seminar that relates to agency pro-

cedures. It is scheduled for a half day on April 19, 1991. He indicated that most of the speakers had already been confirmed. There was some discussion as to whether a full day should be set aside for the seminar, but the consensus was that the present allotment is adequate.

Mr. Tartaglia announced that the CLE Committee had approved programs for the 1991-92 year, and that the Budget Committee is recommending an increase of the base course fees from sixty to seventy-five dollars. He noted that the past year has been a down year for attendance at CLE programs, and discussed some of the possible reasons for that. He stated that sections that had certification programs would need to put on advanced CLE programs. He also said that the CLE Committee would like to see more consistency in representation from the sections, and that sections' representatives should be appointed on a two year basis with representatives-elect also appointed.

The Council discussed Mr. Tartaglia's report, but did not concur with his recommendation that so much of the Section's focus be diverted to the Bar's CLE Section.

Bar Journal Column Committee: Although he was absent, Mr. Dorsey submitted a written report regarding articles he has obtained and solicited for future columns. He also provided information regarding the release that the Bar will require contributors to sign. The release form, which would protect the Bar in the event that the article is determined in some judicial proceeding to be plagiarized, is less hostile to potential contributors than forms that had been submitted in the past.

Legislation Committee: Ms. Steffens discussed the Indexing Bill that is being proposed by the Senate Governmental Operations Committee. Mr. Hyde noted that in accordance with the Council's decision to support the Bill, the Board of Governors has authorized the Section to lobby in support of the Bill.

Ms. Steffens also discussed the "Non rule policy" legislation that is being proposed by the House Governmental Operations Committee, including an effort to address the "shield" provisions that limit challenges to growth management rules through that legislation.

Mr. Hyde noted that the Bar had asked whether the Section might wish to cosponsor a Legislative reception scheduled on

Editor's Note:

The Administrative Law Section Newsletter is of, by and for the members of the Section. We welcome any contributions you wish to make. Please send articles of interest to M. Catherine Lannon, Editor, The Capitol, Room 1602, Tallahassee, FL 32399-1050.

March 19. Ms. Garfein moved that the Section co-sponsor the reception and that up to \$500 be authorized for that purpose. The Motion included authorization to amend the Section's Budget to allow the expenditure. The Motion was seconded by Mr. Stephens, and was passed unanimously.

Newsletter Committee: Ms. Lannon advised that materials for the next newsletter had been provided to Ms. Griffin for printing and publication. She asked that minutes of this meeting be prepared quickly so that, space permitting, they could be included. She also solicited suggested topics and people to author articles for future issues. Ms. Lannon noted that John Rimes had written an article about the recent Florida Supreme Court cases regarding responsibilities for providing transcripts to indigent people confronted with appeals from administrative action. She stated that the deadline for the next issue would be April 3. Mr. Stephens suggested an article about new agency personnel.

Long Range Planning Committee: The Committee had no report.

All Bar Conference: Mr. Stephens reported on the All Bar Conference that had been conducted the prior day. He noted that the Conference was created because of a feeling that the Board of Governors is dominated by large law firms that are willing to make the financial commitment for travel and absence from work. There is therefore a feeling

that the Board does not fully represent the membership of the Bar. The Conference topics were merit selection of judges, minimum practice requirements of lawyers, and certification.

New Business

Hearing Officer Evaluations: Mr. Hyde discussed the concept of whether DOAH Hearing Officers should be subjected to evaluation through questionnaires distributed to members of the Section. The Council discussed the implications of such evaluations given the career service status of Hearing Officers, and what the Section's role might be. Mr. Hyde agreed to discuss the issue with the DOAH Director, and to report back to the Council. Ms. Garfein agreed to accompany Mr. Hyde.

Vacancy on Council: Tom Beason was the only respondent to the Section's advertisement regarding the vacancy on the Council. Mr. Stephens moved that he be elected. The motion was seconded by Ms. Steffens, and was adopted unanimously.

Proposed Budget: The Council voted to adopt the proposed budget for the 1991-92 year.

Next Meeting: Mr. Hyde announced that the next meeting would be conducted on the afternoon of April 19, in Tallahassee.

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

Annual Meeting of The Florida Bar

*June 26-29, 1991
Marriott's Orlando World Center*

See your April 15 Bar News for details and registration forms.

The Florida Bar Continuing Legal Education Committee
and the Administrative Law Section present



Administrative Law Overview: Practice Before Selected State Agencies

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

April 19, 1991

Florida State Conference Center
555 West Pensacola Street
Tallahassee, FL

Course No. 6786R

LECTURE PROGRAM

8:00 a.m.-8:30 a.m.

Late Registration

8:30 a.m.-8:40 a.m.

Opening Remarks

O'Bannon M. Cook, Program Chairman
Ruden, Barnett, McClosky et al., Tallahassee

8:40 a.m.-9:20 a.m.

Representation Before the Florida Department of Revenue

A review and update of procedures relating to disclosure of confidential information; obtaining a binding opinion; access to a dispute resolution process; jurisdiction; and securing a tax refund

Victoria L. Weber, General Counsel
Florida Department of Revenue, Tallahassee

9:20 a.m.-10:00 a.m.

Practice Before the Florida Department of Insurance

How to respond to a formal notice of existing or proposed adverse agency action

Paul A. Zeigler
Katz, Kutter, Haigler et al., Tallahassee

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

Break

10:10 a.m.-10:50 a.m.

Practice Before Florida's Environmental Agencies

Techniques for dispute resolution, rulemaking and administrative adjudication before the Florida Department of Environmental Regulation and Local Pollution Control Programs

Charles G. Stephens
Messer, Vickers, Caparello et al., Tampa

10:50 a.m.-11:30 a.m.

Practice Before Florida's Environmental Agencies

Techniques for dispute resolution, rulemaking and administrative adjudication before the Florida Department of Natural Resources and the Florida Water Management Districts

Kent A. Zaiser, General Counsel
Southwest Florida Water Management District, Brooksville

11:30 a.m.-11:40 a.m.

Break

11:40 a.m.-12:20 p.m.

Practice Before Florida Growth Management and Land Use Planning Agencies

Florida Department of Community Affairs; Regional, County and Local Planning Councils and Agencies

G. Steven Pfeiffer, General Counsel
Florida Department of Community Affairs, Tallahassee

12:20 p.m.-1:00 p.m.

Recent Trends in Administrative Law

Administrative Case Law Update; Statutory and Regulatory Update

Mary F. Smallwood
Ruden, Barnett, McClosky et al., Tallahassee

Each speaker will devote five minutes to the topic of Ethics

— REMEMBER YOUR EDUCATION REQUIREMENT —

DESIGNATION CREDIT

(Maximum: 5.0 hours)

Administrative and
Governmental Law 5.0 hours
Environmental Law 1.5 hours
General Practice 5.0 hours

CLER CREDIT

(Maximum: 5.0 hours)

General: 5.0 hours
Ethics: 0.5 hour

CERTIFICATION CREDIT

(Maximum: 4.0 hours)

Civil Trial 4.0 hours

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