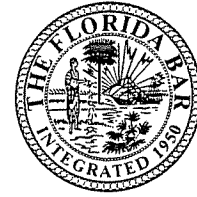


ADMINISTRATIVE LAW SECTION NEWSLETTER



Vol. XI, No. 4

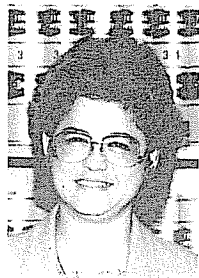
M. Catherine Lannon, C. Gary Stephens, Co-Editors

June/July 1990

Outgoing Chairman's Column

Drucilla E. Bell

Administrative Perestroika



This has been a year full of progress and accomplishments and, yes, even some restructuring and reconstructing, even if President Gorbachev might not recognize it as such.

Our Executive Council was full of relocation with government attorneys going to private practice: Vivian Garfein, former hearing officer Diane Tremor, and myself. Our public service private practitioner Steven Pfeiffer returned to government service as General Counsel at Department of Community Affairs.

We've enjoyed excellent Council activity and participation this year, as you can tell from our annual report in the *Bar Journal*. The section newsletter was published regularly, the CLE programs were excellent and well attended, Administrative Law *Bar Journal* articles were timely and informative, and the Administrative Law Conference was outstanding!

As outgoing chairman, I have the pleasure of appointing the treasurer for Chairman Hyde's term. After consulting, we have agreed that Steve Maher should advance to the position of Treasurer of the Section Executive Council. Because of his enthusiasm and hard work on both the state agency videotape project and the time-consuming, demanding and incredibly successful Administrative Law Conference, he was the obvious choice.

Two of our Council members decided not to seek reappointment to the Council, and with Steve Maher moving up to Treasurer, this created three vacancies although five 1990

seats were available for election. Through the work of our nominating committee, Linda Rigot, Betty Steffens and Diane Tremor, we were presented with an impressive group of seven nominees. The two incumbents who have served as co-editor of the newsletter and chairman of Continuing Education, respectively, are Catherine Lannon and Vivian Garfein, and they have been re-elected to new terms on the Council. Our two nominees who are employed in state government, Nikki Clark from Legal Affairs and Bill Dorsey from the Division of Administrative Hearings, were elected to two of the remaining seats. The one seat remaining will belong to O'Bannon Cook, according to our election at the Annual meeting.

Practicing in Clearwater, I realize the challenge of keeping in touch with Tallahassee and especially the Bar. It is such a pleasant surprise to actually get through on the WATTS line that

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it's hard to remember the list of items that I needed to confer with Peg about. The Bar staff has been very helpful and Peg has been wonderful about returning my calls.

In conclusion, I greatly appreciate having

such a productive hard-working Executive Council and such a dedicated Florida Bar coordinator. It has made my hectic year very enjoyable.

Drucilla E. Bell

Incoming Chairman's Report



Many persons, upon becoming a chairman of a section of The Florida Bar, typically chart an ambitious agenda for their term of office. However, while my agenda is somewhat ambitious, it is not unrealistic and is in many respects quite straightforward. Basically, I would like to ex-

pand the horizons of the Administrative Law Section, both in its number of members and in the subject matters with which it is involved.

Specifically, I would like to see the Section expand its involvement, both in Continuing Legal Education seminars and elsewhere, in the area of federal administrative procedure. Most administrative law practitioners in Florida confine themselves almost exclusively to those legal matters arising under Chapter 120, Florida Statutes. However, it is increasingly apparent to me and to many others that to the extent we ignore the Federal APA, we are doing both the Section and ourselves a disservice. I would like to see, and I specifically invite recommendations concerning, an expansion of the Section's efforts concerning practice and procedure be-

fore federal administrative agencies. Moreover, it is my intent in the reasonably near future to put on a seminar or workshop which is substantially devoted to, if not completely focused upon, federal administrative practice and procedure.

Similarly, and especially with the advent of Florida's growth management legislation founded in Chapter 163, Florida Statutes, administrative practice and procedure before local governments appears to be a burgeoning field of opportunity. I would like to see the Section expand its efforts in this discrete area of administrative practice as well. I look forward to pooling our resources with those of the Local Government Law Section and again welcome any suggestions on this score.

Third, consistent with Bar President James Fox Miller's directives, I will be expanding the Section's efforts in the area of making the administrative process more accessible to indigents and non-lawyers. To that end I have requested that members of the Section's Executive Council, and any others who might be so inclined, provide me with examples of forms (i.e., draft petitions for an administrative hearing, etc.) with an aim toward compiling a manual of forms, general policies, and other guidance to benefit those persons who cannot afford the services of a lawyer in an administrative proceeding. I would also like to examine the possibility of establishing a clearinghouse or registry of administrative lawyers who would be willing to work on a *pro bono* or reduced fee basis for indigent or low-income persons caught up in the administrative process, often through no fault of their own.

If we can accomplish any of the above during my tenure as chairman of the Administrative Law Section, it will be a significant achievement. However, I am committed to achieving all three, and I sincerely believe that it is realistic to do so. I therefore invite, indeed I encourage, the involvement of any members of the Section (and any others for that matter) who would like to assist the Section to realize these goals.

William L. Hyde

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

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Administrative Law Section: Time for A New Agenda?

by C. Gary Stephens

The recent Administrative Law Conference in Tallahassee had the flavor of a reunion for me since many of the people I associate with administrative law, seen only infrequently from my outpost in Tampa, were there. Having been a law student at Florida State the very year that Chapter 74-310, Laws of Florida, was passed and having worked with more than one state agency in an effort to ascertain its obligations under Chapter 120, I have the benefit of seeing administrative law issues in this cosmic perspective, from Alpha to Omega, if you assume today is Omega. After all, only a limited number of people know who the first hearing officer was, where he's working today, and under what alias or disguise.

My greater impression from the conference, however, nostalgia aside, was related to the very

large number of people whom I had *not* seen before and who, nonetheless, brought to those proceedings an interest and curiosity born of job responsibilities acquired only yesterday or last week or last year. It is helpful to hear Art England's descriptions of the golden age of the Law Revision Council and equally refreshing to revisit through Buddy McKay's warm drawl the inside scoop on a legislative process which, although lacking unanimity, nonetheless involved many players who actually knew what they were doing.

The Administrative Law Section no doubt does well to reconvene these principals from time to time if only for hints of legislative intent. Few practitioners in other fields can appreciate how many great war stories there are lying

(Please see page 8)

Bylaws Changes Proposed

by William L. Hyde

The Executive Council of the Administrative Law Section adopted the following changes in its bylaws relating to Article III, concerning the selection, duties, and terms of office of the Section's officers, and Article IV, concerning the selection, duties, and terms of office of the Executive Council.

Article III Officers

Section 1. The officers of this section shall be a chairman, chairman-elect, a secretary and a treasurer.

Section 2. Duties of Officers. The duties of the officers shall be as follows:

(a) Chairman. The chairman shall preside at all meetings of the section and at all meetings of the Executive Council. He or she shall appoint all committees and committee chairmen with the approval of the Executive Council, be responsible for all reports to be submitted to The Florida Bar or the Board of Governors of The Florida Bar, and shall perform all duties as customarily pertain to the office of chairman. The chairman shall be an ex officio member of each committee of the section.

(b) Chairman-Elect. The chairman-elect shall

become chairman in the event of death, resignation or failure of the chairman to serve for whatever reason; provided, however, that in the case of temporary disability or absence of the chairman, the chairman-elect shall serve as acting chairman only for the duration of the chairman's disability or absence. The chairman-elect shall be responsible for such other duties as the chairman may designate. The chairman-elect shall be an ex officio member of each committee of the section.

(c) Secretary. The secretary shall be responsible for all permanent files and records of the section, including the minutes of the meetings of the section and the Executive Council and all committee reports. He or she shall keep accurate minutes of the proceedings of all meetings of the section and the Executive Council and shall furnish copies of said minutes to the Executive Director of The Florida Bar and to the section coordinator.

(d) Treasurer. The treasurer shall serve as liaison to The Florida Bar and other sections on matters involving section finances and shall have the responsibility of accounting for all funds of the section, shall approve all disbursements, shall prepare annual financial statements under the supervision of the Executive Council and shall prepare budget requests and amend-

continued . . .

BYLAWS CHANGES PROPOSED

from preceding page

ments in a timely manner in accordance with the procedures of the Budget Committee of The Florida Bar.

Section 3. Term of Office.

(a) The term of office of the chairman shall begin at the conclusion of the next annual meeting of the section after which he was elected chairman-elect and shall end at the conclusion of the next succeeding annual meeting. Upon expiration of the chairman's term, he or she shall be automatically succeeded by the chairman-elect.

(b) Other officers. The terms of office of the other officers shall run concurrently with that of the chairman.

Section 4. Election of Officers. The chairman-elect, secretary and treasurer shall be elected by a plurality of the membership of the section in attendance at its annual meeting. Nominations shall be made by the Executive Council and may be accepted from the floor.

Section 5. Vacancies. Any permanent vacancy occurring in an office shall be filled for the balance of the unexpired term by vote of the Executive Council at its next meeting.

Article IV Executive Council

Section 1. There shall be an Executive Council composed of ten (10) members of the section, plus the chairman, chairman-elect, immediate past chairman, secretary and treasurer, who shall be ex officio voting council

Florida Administrative Practice Manual

The third edition of the latest CLE manual, FLORIDA ADMINISTRATIVE PRACTICE, is at the printer now. This new and expanded publication will be very useful for attorneys whose practices involve any administrative law. To order, call (904) 561-5843, or send a check or money order for \$60 plus tax to The Florida Bar, CLE Publications, 650 Apalachee Parkway, Tallahassee, FL 32399-2300.

members. The Executive Council shall be the governing body of the Administrative Law Section between the annual meetings of the section. The chairman of the section shall be the chairman of the Executive Council and the secretary of the section shall be the Secretary of the Executive Council. It shall have general supervision and control of the affairs of the section, subject to the provision of the Integration Rule and Bylaws of The Florida Bar and the bylaws of this section. It shall authorize all commitments or contracts which entail the payment of money and it shall authorize the expenditures of all section funds. It shall not, however, authorize commitments, contracts or expenditures involving amounts of money in excess of the total amount which is anticipated as receipts from dues during the fiscal year plus the amount which has been previously collected from dues and remains unexpended. As the governing body of the section, it shall be vested with the power and authority to formulate, fix, determine and adopt matters of policy concerning the affairs and purposes of The Florida Bar. All recommendations of the section to The Florida Bar, Board of Governors of The Florida Bar, any branch of the judiciary or to any other group or body to which recommendations by the section are authorized to be made, must first be approved by the Executive Council. Any recommendations made to other than the Board of Governors of The Florida Bar shall have the prior approval of The Florida Bar. The Executive Council shall conduct its business at regular and special meetings as provided for in these bylaws; provided, however, the business of the Executive Council between regular meetings may be conducted by correspondence to the extent authorized by the chairman.

Section 2. Term of Office. All members of the Executive Council, excluding ex officio voting council members, shall serve for a term of two (2) years, the terms of the members being staggered so that five (5) members shall take office at the conclusion of every other annual section meeting and shall serve until the conclusion of the annual meeting of the section two (2) years thereafter, and five (5) members shall take office at the conclusion of every other annual meeting and shall serve until the conclusion of the annual meeting of the section two (2) years thereafter.

Section 3. Election of Executive Council Members. The members of the Executive Council to be elected each year for two (2) year terms shall be elected by a plurality vote of the membership in attendance at the annual meet-

ing of the section. Nominations shall be made by the Executive Council and may be accepted from the floor.

Section 4. Vacancies. Except as is otherwise provided herein, any permanent vacancy occurring in the membership of the executive council shall be filled for the balance of the unexpired term by vote of the Executive Council at its

next meeting.

Additionally, substantive changes were adopted under Article V to the effect there will be *at least* three meetings of the Executive Council each year.

These amendments have been submitted to the Board of Governors of The Florida Bar for consideration at its July 1990 meeting.

On The Federal Side

by Judge Walter S. Crumbley

A decision was rendered recently by the U.S. Supreme Court in *Sullivan v. Zebley*, 110 S.Ct. 885 (1990), a class action suit challenging regulations promulgated by the Secretary of Health and Human Services which implemented the provisions of the Supplemental Security Income Act. The regulations under attack dealt with the method by which the agency determined entitlement to benefits as a disabled child.

The Social Security Act provides for payment of Supplemental Security Income (SSI) to children who suffer from an impairment of "comparable severity" to one which would render an adult disabled. An adult is considered disabled if s/he is prevented from engaging in any substantial gainful activity by reason of medically determinable physical or mental health problems which meet the duration requirement of twelve months. A five step test (referred to as the sequential evaluation of disability) is used to determine adult disability. At the test's third step an adult may be found disabled if the medical evidence of his impairment is found to match or is equal to one of the listings of impairments, presumed severe enough to preclude any gainful activity, making further investigation unnecessary. If an adult fails to match or equal a listed impairment then the sequential process requires further determinations as to whether the health problems preclude the claimant from doing his former work or any other work, taking into account his age, education, and prior work experience.

The agency test for children ends with the determination as to whether the child matches or equals a listed impairment, there being no further inquiry by the agency corresponding to the final vocational tests for an adult. Claimant Zebley maintained that the secretary's procedures and methods violated the statute which

required a finding of disability for a child under age 18, if he/she suffers from any medically determinable physical impairment of "comparable severity" to that of an adult. (see 42 U.S.C. sec. 1382c(a)(3))

The Supreme Court determined that the agency's regulatory method of determining childhood disability on the basis of matching or equaling the listed impairments was in conflict with the statutory requirement of "comparable severity," and directed the agency to proceed to the fourth and fifth steps in the sequential process. This presented some unique problems as childhood disability cases frequently involve children of tender years, who have no work experience and/or may be of preschool age. To meet the problem that for younger children a vocational analysis required by the fourth and fifth step would be inapplicable and inappropriate, the court went on to require that the agency substitute a functional analysis. This sort of analysis requires that the Secretary inquire into the impact of the impairment (or combination of impairments) on the normal daily activities of a child of the claimant's age. Thus, the factors of speaking, walking, washing, dressing, going to school, feeding oneself, and age-appropriate play activities become the criteria to determine comparable severity.

The practical impact of this decision is far reaching. Many young children who have previously been denied benefits under the old strict standard will now become entitled. In all likelihood the agency will have to reopen and revise many of its older decisions. This case also, once again, emphasizes the legal theory that the agency must, through its implementing regulations, effectuate congressional intent in the strictest sense.

Recent Decisions in Administrative Law

by Daniel Bosanko, Virginia Daire,
M. Catherine Lannon, and Linda Miles

Remand to D.O.A.H. of Licensure Case

In this case, a D.O.A.H. hearing was held regarding an application for licensure by endorsement to practice as a medical physician in Florida. The relevant facts are that the Board of Medicine had issued a Notice of Intent To Deny an application for a license on the basis that the applicant's prior criminal conviction for practicing medicine without a license rendered him morally unfit for practicing medicine. At the hearing, the applicant expressed remorse for his prior actions and testified that he had rehabilitated himself. Based on that testimony, the Hearing Officer issued a Recommended Order recommending granting the license. Within a week of the issuance of the Recommended Order, the Applicant was investigated and arrested on criminal charges for practicing medicine without a license. In addition, the Department of Professional Regulation filed civil charges against him. Based on this new evidence, the Board entered an Order of Remand for consideration by the Hearing Officer of the evidence discovered after the formal hearing, but prior to the Board's hearing on the Recommended Order. The Hearing Officer refused the remand.

The First District Court of Appeal, in response to a petition for review of an interlocutory order, vacated the Hearing Officer's order refusing the remand and remanded the cause. In so doing, the District Court found that the Board's action was "completely appropriate." Pointing out that the matter was a licensing proceeding under Section 120.60, and noting that the licensing process "requires the licensing agency to consider all information coming to its attention prior to issuing a final decision" and that, under those circumstances, "the fact-finding function of the hearing officer may of necessity be invoked more than once on the way to a final decision." Thus, the Court concluded, the Hearing Officer was required to consider the new evidence and to make findings of fact relating to that new evidence and to make a recommendation, based on the additional evidence and findings of fact, on whether the applicant was fit to practice medicine. In taking this action, the Court stated that specified provisions of Chapter 458, Florida Statutes, provide an exception to the strict application of Section 120.57(1)(b)10 to deny further consideration of the application by the Hearing

Officer.

BOARD OF MEDICINE vs. MATA, CASE NO. 89-3444 (1st DCA, Opinion filed May 1, 1990) [15 FLW D1183]

Permit Revocation — Change of Interpretation of Statute

In this case, the Department of Transportation revoked an outdoor advertising sign permit. It had originally granted the permit, but subsequently had changed the method of measuring the distance from the sign to a public park. The permit holder, Lamar Advertising Company, took an appeal from the revocation and the District Court reversed.

In reviewing this case, the District Court pointed out that the Department of Transportation had no rule or any form of written policy on the issue of the method of measuring distance from a prohibited object to a sign. A prior case had held that D.O.T. could revoke a permit for certain reasons, but it could not do so simply because its interpretation of a statute had changed. In the instant case, however, D.O.T. claimed that it was not that it was *changing* its interpretation of the statute, but that rather, it had not interpreted the statute when it issued the original permits. The Court rejected this position as not being supported by the record or the statute.

LAMAR ADVERTISING COMPANY vs. DEPARTMENT OF TRANSPORTATION, CASE NO. 89-1968 (Fla. 1st DCA, Opinion filed March 7, 1990) [15 FLW D641]

Declaratory Statements

Appellant sought review of the Appellee's order denying her petition for declaratory statements. On review, the First District Court of Appeal affirmed, reasoning that the purpose of a declaratory statement is to interpret the law. Appellant had not, in this case, actually sought interpretations of the law, but sought to use 120.565 to challenge the correctness of actions taken by the Appellee in refusing to expunge her name from the child abuse registry. B. J. L. v. DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, CASE NO. 89-2586 (1st DCA, Opinion filed March 16, 1990) [15 FLW D746]

Agency Head As Expert Witness — Due Process

The Fifth DCA certified the following question to the Supreme Court:

Is it a violation of a party's due process rights in an administrative hearing for the head of a department to appear as an expert witness when that same department head later enters the final order in the case?

The Supreme Court answered in the affirmative. This question evolved out of a DRI review hearing. At the hearing, the Department called its only witness, Secretary Thomas Pelham. Upon review of the Hearing Officer's proposed order, the Department, over Secretary Pelham's signature, issued a final order.

The Supreme Court expressed concern that Secretary Pelham was significantly involved in every phase of the case. Most significantly, in issuing the Final Order, Secretary Pelham had to pass upon his own evidence, determining that his testimony was competent and substantial. The Supreme Court held that when an agency head testifies to a materially disputed fact in an administrative hearing, the same witness acting as the ultimate judge of the facts and law is a violation of due process rights. A review of the hearing officer's proposed order should be undertaken by a neutral, disinterested third party substituted from outside the department.

RIDGEWOOD PROPERTIES, INC. v. DEPT. OF COMMUNITY AFFAIRS, CASE NO. 74,724 (Fla. S.Ct., Opinion filed March 30, 1990 [15 FLW S169] (Revised Opinion filed June 20, 1990) [15 FLW S367].

Receipt By Agency of Additional Evidence After D.O.A.H. Hearing — Delay in Rendition of Final Order

The Appellee, James Weaver, filed a complaint with the Florida Commission on Human Relations charging he was denied employment with the Appellant because of his race and sex. The Commission investigation resulted in a "no cause" determination. A formal hearing was held before a hearing officer from the Division of Administrative Hearings.

Following the hearing, Appellee raised the issue of back pay for the first time when he submitted a proposed finding of fact and conclusion of law regarding back pay. Appellee presented no evidence during the hearing relating to economic damages caused by the Appellant.

The hearing officer rejected Appellee's re-

quest for back pay in his recommended order; however, the Commission granted back pay in its final order.

The Court reversed that portion of the final order reasoning that what the Commission essentially did after reviewing the recommended order was to reopen the hearing after all the evidence had been presented and a recommended order entered. The Court concluded that Section 120.57(1)(b)10, Florida Statutes, prohibits an agency from rejecting or modifying recommended findings of fact unless it first determines from a review of the complete record that the findings were not based on competent, substantial evidence. Thus, the statute provides no authority to a reviewing agency to receive additional evidence other than that already presented and evaluated by the hearing officer.

In addition, the Court rejected a challenge to the Final Order based on the fact that the Final Order was not rendered until approximately ten months after submission of the Recommended Order. The Court held that reversal was required only if the delay impaired the fairness of the proceedings or the correctness of the action.

THE SCHOOL BOARD OF LEON COUNTY, FLORIDA v. WEAVER, CASE NO. 88-2728 (1st DCA, Opinion filed January 18, 1990) [15 FLW D224]

Direct Appeal From Filing of Rule — Standard of Review

On a timely, direct appeal of adoption of a rule as final agency action, the First District Court of Appeal held a rule amendment invalid and ineffective for failure to comply with Section 120.54(11)(b), F.S., and remanded to DER with directions to fully comply with the requirements in that section.

Noting that the review standards for sustaining a rule when challenged by direct appeal from the filing of a rule (a quasi-legislative action) are different from those applicable when the challenge is by an appeal from a hearing officer's final order after a 120.54 or 120.56 proceeding (a quasi-judicial action), the Court reaffirmed that the standard of review of quasi-legislative rulemaking procedures in order for a rule to be sustained is that it be determined that the rule is "reasonably related to the purposes of the enabling legislation, and not arbitrary and capricious." *General Telephone Company of Florida, v. Public Service Commission*, 444 So.2d 1063 (Fla. 1984). The competent substantial evidence standard is not applicable to the review of rulemaking pro-

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RECENT DECISIONS

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dures on direct appeal. Applying the quasi-legislative standard to review of rulemaking proceedings, the "court must consider whether the agency:

(1) has considered all relevant factors (2) has given actual good faith consideration to these factors, and (3) has used reason rather than whim to progress from consideration of these factors to its final decision.

Adam Smith Enterprises, Inc. v. State of Florida Department of Environmental Regulation, 553 So.2d 1260, 1273."

In addition to those items required by Sections 120.54(3)(a), (b), (11)(a) and Section 120.68(5)(b), F.S., a proper record from rule-making proceeding should include a statement of the facts considered by the rulemaker and a description of the connection of those facts to the policy formation being reviewed.

In the instant case, the court found the "facts and circumstances statement" required by Section 120.54(11)(a) did not meet the requirements of that section and that the record included no statement of the factors considered and their final disposition.

MANASOTA-88, INC. v. STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL REGULATION, ET AL, CASE NO. 88-197 (Fla. 1st DCA, Opinion filed April 23, 1990) [15 FLW D1095]

TIME FOR A NEW AGENDA?

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about in the evolution of Florida Administrative Law. But today is today, and the thousand members or so of the Administrative Law Section, and countless others who are not, need our assistance and support in going about their business. These services, I believe, can be rendered in many ways not yet considered.

Agency lawyers, as well as senior management officials, need orientation and coaching, if you will, to carry out their distinctive functions in the Chapter 120 scenario. Likewise, hundreds of other lawyers in Florida's many hinterlands are bumping into the Florida Administrative Code in this context or that and

Rulemaking Authority

An order of the county court of Franklin County certified the following question of great public importance to the First District Court of Appeal and the Supreme Court:

Does the Florida Marine Fisheries Commission have the statutory authority to promulgate rules requiring the use of turtle excluder devices in shrimp nets in order to protect endangered and threatened Florida Sea Turtles?

The Supreme Court interpreted Section 370.027, F.S., considering that "While legislative intent controls construction of statutes in Florida, that intent is determined primarily from the language of the statute. The plain meaning of the statutory language is the first consideration." *St. Petersburg Bank & Trust Co. v. Hamm*, 414 So.2d 1071 (Fla. 1982). Applying this standard to determine if the Florida Marine Fisheries Commission had exceeded its authority in promulgating a rule requiring use of turtle excluder devices in certain circumstances, the Court, in part, determined that a "common sense" reading of the statute implemented by the rule in question supported the agency's authority to promulgate the rule. The court also cited Article II, Section 7 of the Florida Constitution, providing that "[i]t shall be the policy of the state to *conserve and protect* its natural resources and scenic beauty," as further support for the Commission to consider environmental factors in development of the rule in question.

STATE OF FLORIDA v. DAVID DAVIS, CASE NO. 75,128 (Fla. S.Ct., Opinion filed Feb. 15, 1990) [15 FLW 559]

wondering what to do next. We should give them at least a partial option to do something other than call some lawyer that you used to know in Tallahassee, although all of the lawyers that I used to know in Tallahassee are all honorable people, to be sure.

The obvious fact is that state law is in effect throughout the state, and that disputes involving state agencies, their regulations and enforcement powers crop up in all corners of the peninsula. The Administrative Law Section, in my view, should send diplomatic representatives outside of Leon County. Having had Deborah Miller (Miami) and Drucilla Bell (Clearwater) as successive Section chairmen has been a start in this direction. Also, to my knowledge, Steve Maher is the only non-Tallahassee person who has ever chaired the Administrative Law Conference committee.

Maybe we should set up an outpost somewhere in Brooksville, wherever that is.

Third, I believe the Section should assist in examining the applicability of alternative dispute resolution (ADR) procedures to controversies arising between citizens and state agencies. If there were ever a concept whose time has come, it is ADR. Whatever ADR stands for, however, it is not business as usual. Rather, it requires a reexamination of the roots of conflict and the mechanisms by which realistic and mutually-acceptable outcomes can be negotiated. Have a look, for example, at Section 120.57(2), Florida Statutes, and speculate as to what minor changes might breathe life into this little-used section, more often thought of by practitioners as a trap for the wary.

Finally, as the social and political agenda of the state evolve into the Nineties, the business of state government will be carried on by new and expanded and re-organized agencies. These

agencies will develop policies and case law and a coterie of present and former practitioners who possess unique knowledge of those agencies' interworkings. With luck, however, this arcane wisdom will be reduced to writing and circulated among all interested practitioners so that the playing field will become more "level." I say this in part as a warning that the day lies ahead when there will be enough hospitals and septic tanks and docks for everyone and no more proceedings under those particular rules and statutes will be had. Then where will we be?

These are only a few items which suggest the possibility of a revitalized agenda for the Administrative Law Section. Some other topics include federal administrative practice, local government hearing mechanisms, fact-finding and mediation techniques, as well as citizen complaint investigations. This is a good time to make *your* thoughts known about the agenda which should shape the future of the Section.

Minutes

Administrative Law Section Executive Council Meeting

Friday, June 15, 1990

Fontainebleau Hotel/Miami Beach

Members present: Catherine Lannon, Steve Pfeiffer, Drucilla Bell, Bill Hyde, Steve Maher, Walter Crumbley, William Dorsey (late) and Gary Stephens. Also present were Peg Griffin, Section Coordinator, O'Bannon Cook and Cam Fentriss.

CALL TO ORDER. The meeting was called to order at 8:40 a.m. by Chairman Bell.

MINUTES. A typographical error was noted on page 2 of the minutes of the March 19, 1990, meeting, which were then approved as corrected.

OLD BUSINESS. No old business was identified as such.

Committee Reports

BUDGET COMMITTEE REPORT. Steve Pfeiffer circulated copies of the recent Statement of Operations prepared by Bar staff. He noted the Section's plan of action in recent years to reduce its sizeable fund balances but indicated that this year's fund balance of \$29,436 also reflected a slight increase over last year. He reported an overall healthy financial situation for the Section.

CONTINUING LEGAL EDUCATION. The

CLE Chairman Vivian Garfein was not present. A brief discussion of a recent CLE seminar in Tallahassee as well as prospective programs and topics ensued.

BAR JOURNAL. Bill Dorsey noted that five articles from the Section had been published last year and that an article by Hearing Officer Ken Ayers was to be the feature article of an upcoming issue.

LEGISLATIVE COMMITTEE. A faxed report from Committee Chairman Betty Steffens was circulated for review by Council members. The report noted that, while several legislative proposals were considered by the 1990 Session, none passed. A brief discussion of DOAH staff and budget matters followed.

NEWSLETTER. The "Newsletter Committee" learned recently that the issue planned for early June would not be coming out prior to the annual meeting due to backups in the Bar publications staff network. The committee elected to stop publication of that issue and to publish an updated version as soon as possible.

COUNCIL OF SECTIONS. Steve Maher reported that he had attended the Council of Sections meeting on behalf of the Section where

continued . . .

MINUTES

from preceding page

the Chief Justice of the Florida Supreme Court had delivered a speech urging greater efforts by the Bar toward legal services for indigents. In that same vein, Maher noted the increasing urgency of Section response concerning forms used in the normal course of administrative law work.

ADMINISTRATIVE LAW CONFERENCE. Maher noted the good attendance and reception of the recent Administrative Law Conference including visits by legislators and the participation of many governmental lawyers. Five articles from presentations made at the Conference, he reported, are to be published in the near future. Bill Hyde praised Maher for his diligence and imagination in putting on the conference, whereupon Chairman Bell presented to him a plaque commemorating his service as Chairman of the Seventh Annual Administrative Law Conference.

TV PILOT SERIES. Maher provided an update of overtures which he is making to the Public Relations committee for further development of the "Inside Florida Government" series whose initial phases were underwritten by the Administrative Law Section.

Annual Meeting of the Administrative Law Section

Friday, June 15, 1990

Fontainebleau Hotel/Miami Beach

At 10:10 AM, following the adjournment of the Executive Council meeting, the Annual Meeting of the Section was called to order. Pursuant to interpretation of the Section (pre-amendment) Bylaws, the Chairman noted her appointment of Steven Pfeiffer as Secretary and Steve Maher as Treasurer for the coming year. Pursuant to previous action by the Nominating Committee, Gary Stephens was also elected as Chairman-Elect. Based upon the results of prior voting, Chairman Bell noted that Vivian Garfein and Cathy Lannon had been elected to new terms on the Executive Council. Upon motion by Pfeiffer, that election for the 1990-92 term was corroborated by the Executive Council. Whereupon the remaining nominations were noted as follows: Nikki Ann Clark, O'Bannon Cook, William Dorsey, Jim Hauser,

New Business

BYLAWS. The Bylaw amendments regarding the nomination and election of both officers and directors were adopted without opposition with only three minor amendments to the proposal circulated by Bill Hyde. A copy of the Bylaws as amended is incorporated herein.

CERTIFICATION. Maher offered a proposal on behalf of former Chairman Deborah Miller, who was unable to attend the meeting, that a subcommittee be appointed to draft a proposal for certification which would form the basis for any further deliberations. Consideration of that proposal, however, was deferred until a future meeting, following discussion by the Council.

CHAIRMAN'S COMMENTS AND PRESENTATION OF AWARDS. Chairman Bell thanked all of those who had contributed to a successful year for the Section. She gave an award to Gary Stephens for reviving the Administrative Law Newsletter and to Peg Griffin for her dependable assistance throughout the year, whereupon the meeting was adjourned.

NEXT MEETING. The next meeting will be in conjunction with the Bar meeting in Tampa at a time and date in September to be announced.

Respectfully submitted,
Charles G. Stephens, Secretary

Cynthia Tunnicliff. Cam Fentriss was nominated by Stephens, whereupon the nominations were closed. As the result of a written voting procedure, Nikki Clark and Bill Dorsey were elected to new terms on the Council. The remaining slot was filled by the Chairman Bell's appointment of O'Bannon Cook. The election of officers was also formalized as follows: Gary Stephens as Chairman-Elect, Steve Pfeiffer as Secretary and Steve Maher as Treasurer.

James Fox Miller, current President of The Florida Bar, appeared to address the Section concerning the status of Bar issues, programs and priorities.

Upon resumption of the Annual Meeting, Bill Hyde was introduced as the new Section Chairman. Hyde presented an attractive plaque to Drucilla Bell as outgoing Chairman and

embarked upon a short but moving speech around the theme of "New Members and New Matters." In this statement, Hyde proposed to extend the reach of the CLE programs into areas and corners heretofore untouched, to continue exploration of federal administrative law concerns; to pursue ongoing questions about local government law (especially administrative proceedings); and to seek potential avenues for the delivery of pro bono legal services in areas of administrative law expertise. Hyde reiterated his expectation of dedication and hard work by officers and council members alike during the coming year. Whereupon the Annual Meeting of the Section was adjourned.

Respectfully submitted,
Charles G. Stephens, Secretary

**Administrative Law Section
Member/Officer Reimbursement Policies**

Section committee work involves time and expenses which are not generally reimbursed, however, expenses will be reimbursed on special occasions on which individuals are requested to incur expenses on behalf of the section as long as prior approval has been obtained from either the Chairman or the Chairman-elect. In these instances, the following reimbursement policy applies:

***Officer/Council Expense:** Telephone charges must be itemized as to date, party called, telephone number and purpose of the call. Conference calls must be approved by the section chairman or chairman-elect; Office copy costs are reimbursed at 20¢ per copy. Itemize number of copies and purpose of copies. Any large mailings must be itemized as to what was mailed to whom and at what cost. Mailings should be done by section coordinator at Bar headquarters when possible. Items requiring printing shall be printed by The Florida Bar upon approval of the chairman. In those instances in which printing may be made less expensively or quicker, the chairman may approve the items to be printed other than at The Florida Bar.

****Officer Travel:** Air fare in all instances shall be "coach." Mileage reimbursed at the rate of 22¢ per mile; When taxis or limousines are not practical and a rental car is to be used, subcompact or compact should be used. The method of travel should be the most economical, considering both time and travel costs. Meals and lodging shall be reimbursed at actual cost, not to exceed the maximum staff rate; copies of receipts for lodging, out-of-town

**Administrative Law Section
Proposed Budget 1990-91**

The budget below as approved by the Administrative Law Section Executive Council on January 18, 1990, and subsequently by the Budget Committee and Board of Governors of The Florida Bar.

Revenues:

Dues	\$15,200
Dues Retained by Bar	7,600
Net Dues	\$ 7,600
CLE Seminars	3,040
Videotape Sales	150
Audiotape Sales	200
Interest	1,260
Total Revenues	\$12,250

Expenses:

Postage	800
Printing	300
Officer/Council Ofc.	*300
Newsletter	1,200
Membership	200
Supplies	50
Photocopying	150
Officer Travel	**400
Meeting Travel	***2,500
CLE Speakers	****100
Committees	100
Council Meetings	250
Bar Convention	*****1,500
Awards	250
FAX Processing	100
Directory	1,500
Other	50
Total Expenses	\$ 9,750

Beginning Fund Balance	\$15,729
Plus Revenues	+ 12,250
Less Expenses	- 9,750
Less Operating Reserve	- 975
Ending Fund Balance	\$17,254

THE FLORIDA BAR
650 APALACHEE PARKWAY
TALLAHASSEE, FL 32399-2300

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travel expenses (airline tickets, etc.) and all other charges of \$25 or more (other than mileage) must be attached. When paying expenses (meals, etc.) for other individuals, the names of the other parties must be indicated and the relation to Bar activity disclosed.

*****Meeting Travel:** Policies for reimbursement of Executive Council members are the same as for Officer Travel above. The Executive Council, upon recommendation of the Budget Committee, may authorize reimbursement to Executive Council members for travel expenses.

******CLE Speakers:** This line item has been provided to reimburse CLE speaker expenses in excess of the \$50 maximum meal allowance provided under CLE policy. A maximum reimbursement has not been specified.

*******Bar Convention:** This line item has been provided to cover the cost of the section reception held in conjunction with the Section Annual Meeting. This line item also covers the chairman's lodging expense, if warranted, incurred in connection with the Section Annual Meeting.

Change of Address:

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