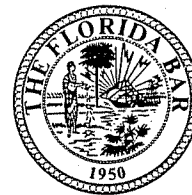

ADMINISTRATIVE LAW SECTION NEWSLETTER



Vol. XIV, No. 4

Veronica E. Donnelly, William L. Hyde, Co-editors

June 1993

From the Chair

Singing "Your" Song

by Steven Pfeiffer, Chair

*Look what they've done to my song, Mom,
Look what they've done to my song.
It was the only thing I could do half right
and it's turning out all wrong Mom,
Look what they've done to my song.*

— Melanie



I have sung Melanie's song a lot of times since I began living with the Administrative Procedure Act. I sang it first in 1975 when the Legislature mandated that petitions for hearing be filed directly with agencies instead of with the Division of Administrative Hearings, chapter 75-191, *Laws of Florida*. I sang it again when the Department of Banking and Finance gained an exception from provisions requiring hearing officers to enter recommended orders. See: Section 120.57 (1)(b) 13 *Florida Statutes*. I dusted off the old record and played it in 1991, when the Legislature amended the Act to create a new remedy for determining whether agency statements are "rules" that were not promulgated. Ch. 91-30, *Laws of Florida*. I played it most recently in 1992 when provisions dealing with economic impact statements, rather than being simplified, or better yet, eliminated, were made more confusing and more arduous.

In fact, I have sung the song, or at least parts of it, every year since 1974. It has not always been in response to legislation. Judicial decisions have invoked a chorus or two. *Department of Transportation v. Groves-*

Watkins. 530 So. 2d 912 (Fla. 1988) comes to mind. So do *Hammond v. Department of Transportation*, 493 So. 2d 33, 35 (Fla. 1st DCA 1986) and *Humana, Inc. v. Department of Health and Rehabilitative Services*, 492 So. 2d 388 (Fla. 4th DCA 1986). But this past year has been quiet. The Act and the process have been allowed to jell and mellow without new legislation and without new judicial interpretations that wrench expectations. Well, maybe *Procacci v. Department of Health and Rehabilitative Services*, 603 So. 2d 1299 (Fla. 1st DCA 1992) is a mite peculiar, but along with other generally muddled responses to *Groves-Watkins* it is hardly shocking. On the whole it has been a quiet year, and . . . well, it has been nice.

But do not relax. There is a new kid on

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YOUR SONG

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the block. The Florida House of Representatives has established the Select committee on Agency Rules & Administrative Procedures. It is chaired by Representative Randy Mackey of Lake City. Representative Willye F. Dennis of Jacksonville is Vice chair. The committee's purpose is to "... make the process more 'user friendly' and hopefully less expensive for the average citizen." I attended the committee's meetings during the 1992 session. The committee is composed of Legislators with no particular background in the administrative process. I do not believe that any of them have experience working under the Act, except as they may have dealt with it as legislators.

It is apparent that some members of the legislature and probably some members of the committee have a perception that agencies have run amuck, pursuing policies that have nothing to do with legislative intent. They believe that chapter 120 is hopelessly confusing, serving only to frustrate the rights of citizens who are being abused by these same berserk agencies. This feeling gave rise to such bills as one that would make it a criminal misdemeanor for an agency to propose rules that are contrary to legislative intent, as intent is decided by a "prime sponsor" of the legislation being implemented. I am not kidding! The person listed as responsible for the proposed rule in the "Florida Administrative Weekly" would be the misdemeanant. Perhaps I am becoming too set in my ways. I have worked under the umbrella of the A.P.A. for nearly twenty years. I harbor some feelings that I understand it. It bothers me when somebody tries to change it around on me. In part I am bothered simply because of intrinsic conservatism. I do resist change. Changes to the A.P.A. make my life more difficult. I recognize this about myself, and I try not to react thoughtlessly to proposals to "improve" the process. I therefore avoided responding too quickly to the Select Committee's deliberations. But, Melanie's song dominated my consciousness during the meetings a lot of times.

I believe that the Florida Administrative Procedure Act is a progressive document. It

lets citizens know how the executive branch will do business. It provides a framework for making decisions and a mechanism for testing decisions in processes that are fair. While it is at times cumbersome, it is much quicker than resort to the courts would be. When the Act was adopted in 1974, it was considered the most enlightened in the nation. It still is. While it can doubtlessly be improved, it would be a tragedy if it is scrapped. I am confident that some members of the Committee do not share these views. Some in fact believe that Florida's administrative process does not serve us well. So, the Select Committee worries me.

I am certainly not worried about simplifying the process and making it less expensive. I do have a sense that the full range of protection that the process offers, including discovery, may not be needed in every case. Establishing simplified procedures and identifying cases in which simplified procedures will be followed would enhance the process. Discarding the process would not, however, enhance the operation of state government nor would it enhance citizen access to agency decision making.

The Select committee has established a working group to assist it in its review of the chapter 120 process. The group is expected to meet as often as twice each month between now and October. Its work product will be a recommended rewrite of chapter 120 or portions thereof. I believe that participation by attorneys who practice administrative law both during deliberations of the working group and of the Select committee would provide helpful resources. The staff's phone number is (904) 487-1300. They can inform you about meetings.

I urge you to pay attention to the work of the Select committee. It is, after all, the words and notes of "your song" that are involved.

This is my final column as Chair of the Section. I have appreciated your responses to earlier columns. Stephen Maher will begin his term as Chair after the Convention. I have worked with Steve for a number of years. I am absolutely confident that his columns will engender interest and controversy. He is that kind of person. Stay tuned and watch this space. This is going to be fun.

Attorney Fees After the Filing of Chapter 11 Proceedings in Bankruptcy Court:

What Every Administrative Law Attorney Needs to Know

by J. B. Donnelly, Esquire
Greene, Donnelly, Schermer, Tipton & Moseley
Tampa, Florida

After a debtor files for reorganization in a Chapter 11 proceeding in Bankruptcy Court, a need may exist for legal representation in ongoing state regulatory matters. Under such circumstances, the administrative law practitioner should be alert to his or her economic interests and the necessary steps that have to be taken to assure that payment will be received for the legal work which has already been completed and that compensation will be forthcoming for future services. Otherwise, the attorney will be in the uncomfortable position of having worked for free when he or she expected to be paid for the efforts undertaken.

Once the attorney receives notice of the filing of a Chapter 11 petition by the client (now known as "debtor"), he or she should file a proof of claim with the Bankruptcy Court for compensation for the performance of past services. More likely than not, this claim would be an unsecured, non-priority claim. The attorney should not expect reimbursement for the full amount of the claim. The proof of claim is filed on a standard form which can be obtained from the clerk of the Bankruptcy Court.

The next step is to contact the debtor/client to determine if the bankruptcy attorney will be making an application with the court for the employment of professionals during the Chapter 11 proceeding. The administrative law attorney should request the opportunity to discuss why his or her special services are necessary to the successful reorganization of the debtor/client with the bankruptcy attorney. Sometimes the bankruptcy attorney is unaware of the importance the administrative law proceedings has in the debtor's reorganization scheme. For example, he or she might not

know how important it is for a debtor with a car dealership to continue with its challenge to the relocation of another dealership closer to its existing franchise. Under such circumstances, input may be needed from the administrative law practitioner for the application which will be prepared by the bankruptcy attorney. The Bankruptcy Court will require a detailed description of the duties and responsibilities of the administrative law attorney and the reasons why such employment is necessary before approval is given to compensate him or her as special counsel. It is wise to remember that you will not be compensated for your time and input into this application. The time, however, is well spent if your future compensation is approved.

Once the bankruptcy judge reviews the application, an administrative order is entered which sets forth the procedure for payment of special ordinary counsel. It is important that the procedures are followed exactly so that payment of attorney fees will occur. Additionally, the administrative law counsel should read the order to determine if the judge approves the payment of special counsel retroactively or from the date of the administrative order. Obviously, if the order does not cover the period of time between the Chapter 11 petition and the judge's administrative order, the attorney cannot recover a fee for the work done on the administrative law case during this interval.

Many attorneys who rely upon the bankruptcy attorney's knowledge of a particular bankruptcy judge's prior rulings, will take the chance that the judge will sign a retroactive order. The most prudent course of action, however, is to motion the hearing officer in the administrative case for a tem-

continued . . .

CHAPTER 11*from preceding page*

porary abatement of the administrative proceeding until the administrative order approving special counsel is signed by the bankruptcy judge. Normally, this takes between thirty to ninety days. A copy of the application to the Bankruptcy Court together with the motion and brief testimony from the bankruptcy attorney should enable the hearing officer to grant the request. If

the motion for abatement is denied by the hearing officer, this denial should be brought to the attention of the Bankruptcy Court, who might allow retroactive fees under such circumstances.

A general understanding of the interplay between the Bankruptcy Court and the administrative proceeding during a debtor's reorganization should enable the administrative law attorney to receive postpetition attorney fees for all legal work completed after the reorganization begins.

Meet the Public Utilities Law Committee of The Florida Bar

The mission of the Public Utilities Law Committee is "to gather and disseminate information, share expertise, and advise the Bar on the legal, technical and economic issues related to regulated utilities providing electric, gas, water, wastewater, and telephone services."

This committee is composed of practitioners in various fields, such as contract law, administrative law, federal and state regulatory law, antitrust law, environmental law, consumer advocate issues, and many other areas. Some examples of our members are: general counsel/governmental liaison for a large electric utility, several members of the PSC staff, several law firm members representing various types of utilities in every field from torts to regulation, one former and one current PSC Commissioner, a Hearing Officer and several others. As you can see, it is a diverse group, representing many phases of utility work. However, it is a small field, and although we have been active, we have not been able to consistently maintain the required 50 members.

Early this year we were reviewed by The Florida Bar's Program Evaluation Committee, with the idea that we would be merged into an already existing section.

After much discussion, the committee came to the conclusion that, although we

are not entirely "administrative", the Administrative Law Section had the most interests in common with the greatest number of us, and was the area that almost all of us touched on one way or the other.

In conjunction with our mission, on April 29, 1993 the committee presented a CLE course entitled "Environmental Issues in Utility Sitings". This was organized by member Diane Kiesling of Tallahassee and the panel was composed of national and state experts in the field. It was very well attended and received many positive reviews.

Past activities have been tours of the Orlando Utilities Commission's Stanton Generating Plant and its wastewater treatment facility, the Metro Dade Cogeneration Facility, and underground Walt Disney World. The committee has also presented panels and seminars on Current Issues in Public Utility Law, Deregulation of Public Utilities, PSC Sunset Legislation, Antitrust and Public Utilities, and Cogeneration. We have also had several articles published in *The Florida Bar Journal*.

We hope to keep our "core group" active, and to recruit new members from the Administrative Law Section.

— Mary Denise Bryant, Chair

Have You Missed Us?

The Bar's mail room has experienced some difficulty this year in sending copies of this Newsletter to Section members. If you missed receiving any copies of this year's Newsletter, please contact Gene Stillman at the Bar (561-5623).

Legislative Report:

The Select Committee on Agency Rules and Administrative Procedures

by David W. Nam, Legislative Analyst,
Select Committee on Agency Rules and Administrative Procedures

I. Introduction

Speaker Bolley L. "Bo" Johnson (D., Milton) formed the Select Committee on Agency Rules and Administrative Procedures (Select Committee) of the House of Representatives during the November 1993 organizational session of the Florida Legislature. Speaker Johnson's remarks at the time of his formation of the Select Committee noted the proliferation of administrative agency rules and the dramatic ways that these rules impact Florida's citizens. The Speaker expressed concern that rules adopted by administrative agencies are sometimes inconsistent with legislative intent and promulgated without adequate public input. Speaker Johnson demonstrated the commitment of the House of Representatives to legislative oversight of agency regulatory activity and to increasing opportunities for meaningful public participation in the administrative process through his selection of Joseph R. "Randy" Mackey, Jr., (D., Lake City) as chairman of the Select Committee, and the members appointed to the Select Committee.¹ The Speaker also requested that the House provide the Select Committee with the full powers of a standing legislative committee.

Chairman Mackey shares the Speaker's concern with agencies' lack of adherence to legislative intent when exercising regulatory authority and strongly supports greater opportunities for public participation in the administrative process. The Chairman believes effective legislative oversight will increase agencies' compliance with legislative intent. He wants to increase the awareness of the administrative process among members of the Legislature and its staff and provide them with ready access to administrative information through the creation of an administrative data base. Chairman Mackey also believes the Joint Admin-

istrative Procedures Committee (JAPC) can more effectively advocate legislative positions in the administrative process. He looks forward to working with Senator Curt Kiser (R., Palm Harbor) and Representative Scott Clemons (D., Panama City), alternating chairmen of the JAPC, on legislative oversight issues.

Chairman Mackey is extremely concerned with the costs imposed on Florida's citizens and businesses by agency rules and the administrative process. The Chairman believes that when rules are developed agencies often fail to give sufficient consideration to the burdens the rules will impose on the regulated community. This leads to the development of rules that ignore lower cost alternative means of achieving regulatory objectives and imposes unnecessary costs on regulated interests. The Chairman feels a similar problem exists when agencies make decisions that determine citizens' substantial interests. Chairman Mackey wants agency decision-makers to give greater weight to the effects their decisions will have on citizens' substantial interests. The chairman believes that the costs associated with review of agency decisions through the administrative hearing process effectively precludes many citizens from exercising their rights under the Administrative Procedure Act (APA). Chairman Mackey does not believe this was intended for Florida's administrative process.

II. 1993 Regular Session

The Select Committee met regularly during the 1993 regular legislative session. The newly appointed members were anxious to learn more about the intricacies of the APA. Professor Johnny C. Burris, of the Nova University Shepard Broad Law Center, prepared materials which assisted the members in achieving a better understanding of the

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LEGISLATIVE REPORT

from preceding page

APA. Administrative hearing officers Michael Ruff and Robert Benton attended committee meetings and answered members' questions and provided their insights into the APA.

The Select Committee spent considerable time taking citizens' testimony regarding experiences dealing with administrative agencies. Many legislators are concerned with the volume of citizens' complaints they receive involving perceived administrative agency abuses. Testimony before the Select Committee raised questions concerning legislative authorization for various agency actions and abuses of authority by agency decision-makers. The Select Committee reviewed specific agency actions in some instances as a result of the testimony received from citizens. The actions of the Select Committee facilitated resolution of a number of disputes between citizens and administrative agencies. House members valued the Select Committee as a place to refer disgruntled constituents with problems regarding administrative agencies.

Sharyn Smith, Division Director of the Division of Administrative Hearings (DOAH), introduced the members of the Select Committee to the administrative data base and retrieval system developed by the DOAH. The DOAH administrative data base was originally authorized by the Legislature in 1991 and allows the electronic search and full-text retrieval of agency final orders. The members saw the value of this system as a tool for legislative oversight and the possibilities for providing widespread and low-cost public access to administrative information. Chairman Mackey worked to extend and expand the DOAH project through an appropriation made during the 1993 regular legislative session.

Chairman Mackey's interest in relieving small counties from excessive burdens of compliance with agency rules prompted the Select Committee to propose legislation to allow tiering of rules to reduce disproportionate impacts on small counties. House Bill 2177, offered by Chairman Mackey and the Select Committee, provided language which amended s. 120.54(2) (a), F.S., (1992 Supp.), which currently allows agencies to tier rules to reduce disproportionate impacts

on small businesses. This language also passed several Senate Committees. However, House Bill 2177 died on the Senate special order calendar after the bill passed the House.

III. Prospects for the 1994 Legislative Session

Chairman Mackey's goal for the 1994 legislative session is to develop legislation which will increase administrative agencies' adherence to legislative intent and provide greater opportunities for public participation in the administrative process. During the interim period prior to the 1994 legislative session, a committee of APA practitioners appointed by the Chairman will work with the Select Committee staff to review the administrative process and make recommendations to the Committee. A primary objective of this review is to determine ways to reduce costs associated with administrative agency rules and participation in the administrative process. This review is also designed to clarify the administrative process by rewriting confusing portions of the APA, codifying decisional law necessary to understand the APA, and by making recommendations which will streamline the administrative process. The Chairman plans to have the committee's recommendations ready for discussion at the Administrative Law Conference in October.

The Select Committee will continue to take testimony from citizens regarding perceived abuses by administrative agencies, holding hearings in Tallahassee and possibly at other sites around Florida. Representative Ken Pruitt (R., Port St. Lucie) has suggested the creation of a legislative ombudsman to assist legislators with constituent problems regarding administrative agencies. This proposal was received with interest by Chairman Mackey and other members of the Select Committee and will likely be the subject of a bill during the 1994 session.

Chairman Mackey is very interested in the DOAH administrative data base project and has instructed staff to explore ways to provide widespread public access to the system and to ensure that pertinent administrative information is included in the data base. The Select Committee will also work to develop a formal procedure for rule review by standing committees of the House

of Representatives. This procedure will assure that House standing committees have an opportunity to review and provide the JAPC with information regarding legislative intent on any rule under review.

Chairman Mackey requests that interested persons submit any recommendations for modifications to the administrative process to the Select Committee and invites citizens who have experienced problems in dealing with state administrative agencies

to contact committee staff.

¹ Representatives appointed to the Select Committee are: Joseph R. "Randy" Mackey, Jr., Chair (D., Lake City); Willye F. Clayton Dennis, Vice Chair (D., Jacksonville); Bruno A. Barreiro, Jr. (R., Miami); Irlo "Bud" Bronson, (Kissimmee); Victor D. Crist, (R., Temple Terrace); Miguel A. De Grandy, (R., Miami); Ronald C. "Ron" Glickman, (D., Tampa); Bert J. Harris, Jr., (D., Lake Placid); Elvin L. Martinez, (D., Tampa); Kenneth P. "Ken" Pruitt, (R., Port St. Lucie); Ron Saunders, (D., Key West); Charles W. "Charlie" Sembler, II, (R. Sebastian); John Thrasher, (R., Orange Park).

Opinion:

Evidentiary Findings Made By Hearing Officers Versus Special Agency Expertise

by Debra Slater, St. Petersburg

After a dispute of material fact between an agency and a substantially affected party is sent to the Division of Administrative Hearings, most affected parties reasonably believe the dispute will be resolved through the record created at hearing. While it is clear that the agency can reject or modify findings of fact made by the hearing officer based upon the record or determine during the review of the record that the proceeding failed to comply with essential requirements of law, the statute fails to inform the affected party of the possibility of a rejection or modification of factual findings based upon special agency expertise. In most situations, the affected party learns of this special expertise through the final order issued by the agency that rejects the hearing officer's findings which support the affected party's position in the dispute. See, for example: *Heifetz v. Dept. of Business Reg.*, 475 So.2d 1277 (Fla. 1st DCA 1985), and *Harac v. DPR*, 484 So.2d 1333 (Fla. 3d DCA 1986).

Although the reviewing courts continue to remind agencies that factual matters which are susceptible to ordinary methods of proof that are not infused with policy considerations are within the prerogative of the hearing officer, agencies continue to assert that special agency expertise allows them

to overrule factual determinations within a particular recommended order without further explanation. See *Ganson v. State Dept. of Administration*, 554 So.2d 516 (Fla. 1st DCA 1989).

To eliminate the need for subsequent factual determinations by the appellate courts on the issue of whether the particular factual dispute should have been decided by the hearing officer in the first place, this issue should be asserted or waived by the agency during the early stages of the formal hearing process. If promptly asserted, interlocutory appeal can resolve this issue independent from the hearing officer's findings and the modifications or rejections ultimately decided upon by the agency. This change in the current process would place affected parties on notice of the agency's real role in the dispute. A proper record under Subsection 120.57(1)(b)6, Florida Statutes, would be established and the hearing officer would be in a situation where he or she would know how to consider the evidence received into the record in the case. Under this revised process, the affected party can make a responsible decision as to whether the dispute should proceed through a formal or informal proceeding before seeking further judicial review.

Section Plans Conference on the Florida Constitution

The Administrative Law Section is planning to sponsor a Conference on the Florida Constitution and has asked the Council of Sections to co-sponsor the conference. The Administrative Law Section Executive Council approved the conference and the budget amendment necessary to fund the conference at its April meeting. The Council of Sections discussed the proposal at its April meeting. The council tabled the idea at that time so that section representatives could take the proposal back to their sections for further discussion. A final vote in the council is planned at its June meeting. The section will proceed with the conference whether or not the council agrees to participate.

The event will be held at the Center for Professional Development in Tallahassee, Florida on April 22 and 23, 1994. The conference will occur several years before the next scheduled revision of the Florida Constitution in 1998. The conference is an opportunity to surface and explore possible issues for constitutional revision well before the formal revision process gets underway. This will permit thought, discussion and scholarship that might prove impossible if the issues were not raised in advance.

Lawyers are in a good position to know where the constitution is in need of revision because they are consulted by clients who experience the problems that are caused by constitutional inadequacies. The Administrative Law Section recognizes that the Florida Constitution does not fall squarely within the mandate of any section and that the constitution is of great interest to the members of many sections. This section has taken the lead because it is an important project. It will also be a way to remember Pat Dore's important contributions to constitutional revision. The conference will be held on the weekend before what would

have been Pat Dore's fiftieth birthday, and a special event is planned at Florida State University Law School on Saturday, April 23, 1993, to conclude the fundraising for the named chair that the section is working to establish in Pat Dore's honor at the law school. The section's goal is to raise \$100,000.00 for the chair by that time.

It appears from the response thus far that this event will generate great excitement in the legal community. Section Chair-elect Stephen T. Maher is the conference chair, and he has already begun to assemble a Steering Committee that will help focus the conference. The Steering Committee promises to be an exceptional group. It already includes individuals with great experience in constitutional revision, including Chesterfield Smith, Judge Thomas H. Barkdull, Jr. of the Third District Court of Appeal and Talbot "Sandy" D'Alemberte. It also includes other important public figures, including Chief Justice Rosemary Barkett of the Florida Supreme Court, Judge Emerson Thompson of the Fifth District Court of Appeal, Jay Peterson, the Governor's Counsel and Deborah Kearney from the Governor's legal staff and Arthur England, former Chief Justice of the Florida Supreme Court. Professor Thomas Marks of Stetson, who has written a book on the Florida Constitution, has also agreed to participate.

There are also opportunities to produce scholarship in connection with this event. The Nova Law Review is now working on a special issue on the Florida Constitution, and is interested in accepting articles from conference participants for that issue. The deadline for articles is in September and the issue is due out in January, 1994, a few months before the conference is scheduled to occur. Mark your calendar for this important event.

First District Court of Appeal Appointments

The First Appellate District Judicial Nominating Commission has proposed three names to Governor Chiles for the current vacancy on the First District Court of Appeal. Those nominated are Robert T. Benton, II, Perry F. Odum and Judge Leroy A. Lawrence, Jr. In addition, the retirement of Judge Wigginton will produce another opening on the First District bench. The Judicial Nominating Commission will likely consider applications for that opening in the near future.

The Executive Council has taken the position that administrative law expertise is needed on all appellate courts, and that such experience is especially essential to the First District because that district is the home district to all state agencies and handles a proportionately larger share of the adminis-

trative law cases in the state.

The section does not endorse individual candidates. This information is published solely to allow members of the section the opportunity to express their opinions on the various vacancies. If you wish to write concerning the current nominees for the First District Court appointment, letters should be addressed to Governor Chiles with a copy to Samelia King, Appointments Secretary. Both letters should be addressed to the Governor's Office, The Capitol, Tallahassee, Florida 32301. If you wish to express an opinion to the Judicial Nominating Commission on future appointments, write to the Commission Chair, Cynthia Tunnickliff, P.O. Drawer 190, Tallahassee, Florida 32302.

Carol A. Forthman

MINUTES

Administrative Law Section

Executive Council Meeting

Friday, April 30, 1993
The Florida Bar Annex
Tallahassee, Florida

I. Call to Order

The meeting was called to order by Section Chair G. Steven Pfeiffer.

Members Present: G. Steven Pfeiffer, Stephen T. Maher, Linda M. Rigot, Johnny Burris, Veronica Donnelly, Betty Steffens, Denise Bryant, Kathy Castor, Catherine Lannon, Mike Ruff, Diane D. Tremor, William E. Williams, Dave Watkins, Carol Forthman and Ralf G. Brookes.

Members Excused: William R. Dorsey, Jr. and Vivian F. Garfein.

II. Preliminary Matters

A. Consideration of the minutes from the January 15, 1993 meeting

The minutes from the prior meeting were approved.

B. Treasurer's Report

The Treasurer reported that there was approximately \$25,000 in the Treasury with-

out counting recent CLE revenues.

C. Chair Report

The Chair made remarks throughout the meeting.

III. Committee Reports

A. Long Range Planning Committee

Stephen T. Maher gave the committee report. It was reported that five Administrative Law Section events are planned for the 1993-94 bar year. CLE programs are planned for the fall and spring, the Pat Dore Memorial Administrative Law Conference is planned for early October and the Public Utilities Committee, which is merging into the section, will present its annual program in April, 1994 as a section event for the first time next year.

In addition, it was reported that progress had been made working on the proposed Con-

continued . . .

MINUTES

from preceding page

ference on the Florida Constitution that had been discussed at the prior section meeting. [Ed. Note: For more information about the conference see the article about it elsewhere in this newsletter.] It was reported that a date and place for the conference had been chosen (April 22 and 23, 1994 in Tallahassee at the Center for Professional Development) and that a Steering Committee for the conference was in the process of being formed. The idea of holding a conference on the Florida Constitution next year has been well received in a number of quarters. The Council of Sections was asked to consider co-sponsoring the conference at its April meeting and it will consider co-sponsorship at its June meeting. If approved, this co-sponsorship will help involve a greater cross-section of the bar in the conference. If co-sponsorship is rejected, the Administrative Law Section will proceed to put on the conference without a co-sponsor. If co-sponsored, the proceeds after expenses will be split as follows: 50/50 between the section and the council, unless more than 50% of the conference participants are from the Administrative Law Section, in which case the section's share will increase in proportion to its members participation. A proposed budget for the

conference was circulated, and it was proposed that the Council approve the project and a budget amendment needed to authorize funding for the conference. The motion passed.

B. CLE Committee

Scott Boyd was congratulated for his excellent work in putting together the Spring CLE on rulemaking. The group asked that he be sent a letter commending him for his efforts.

Carol Forthman, the incoming Chair of the section's CLE Committee, reported on the CLE retreat in Stuart.

C. Publications Committee

Linda Rigot reported that the third newsletter had been delayed and that a fourth issue was planned before the end of the bar year. It was also announced that the paper size used by the newsletter would be changing. The committee was again asked for permission to reprint an article. There were five columns in the Bar Journal this bar year. The 4th Edition of the Florida Administrative Practice Manual is now available.

D. Finance Committee

The budget amendment approved during the Long Range Planning Report was again passed and the expense side of the budget was amended to reflect the change.

E. Legislative Committee

A report on the recently concluded legislative session was given. No major APA revisions were adopted. Funding for the project that is attempting to provide electronic access to DOAH orders was approved. A select committee in the House is continuing its work over the summer.

F. Pat Dore Distinguished Professorship Committee

No report was given, as Vivian was unable to attend.

G. Task Force Reports

No reports were given.

H. Florida Bar Liaison

Developments in the Council of Sections were discussed.

I. First DCA Mediation Advisory Committee

It was reported that the First DCA's mediation grant proposal was not funded.

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

G. Steven Pfeiffer Chair
Tallahassee

Stephen T. Maher Chair-elect
Coral Gables

Vivian F. Garfein Secretary
Tallahassee

Linda M. Rigot Treasurer
Tallahassee
and Chair
Publications Committee

Veronica E. Donnelly Co-editor
Tallahassee

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Tallahassee

Lynn M. Brady Layout
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.

J. Membership Committee

Kathy Castor reported that mailings were underway to try to boost membership.

K. Model Rules Revision Committee

The Committee has met and will meet again soon. Workgroups are focused on particular issues.

L. Administrative Law Conference

The conference is scheduled for October 1 and 2, 1993 in Tallahassee. The theme for the conference is "Government, Doing More With Less."

IV. Old Business**A. Designation Program Issues**

Designation is being phased out. How should the section respond? Over the years, efforts to establish certification in Administrative Law have failed to gain support. We will monitor the efforts of related sections on this issues. Ralf Brookes will monitor Environmental and Land Use, Cathy Lannon will monitor Health Law and Steve Pfeiffer will monitor Local Government.

B. Public Utilities Merger

Denise Bryant, the Chair of the Public Utilities Committee, attended and was introduced to the Executive Council. When the committee's merger is complete it will remain a committee within the section with

its own committee officers and it was the sense of the council that a representative of the committee should serve on the Executive Council.

V. New Business**A. Supreme Court Inquiry**

The Florida Supreme Court sought input from the section that required a response before this meeting. Steve Pfeiffer responded that the section does not favor mediation on appeal and that the section does not have a position on a special appellate court for administrative cases, but that the proposal is worth exploring.

B. Nomination of Officers and Directors

Some discussion was had on this and a conference call was planned to address this question.

C. Activities at Florida Bar Convention

A reception with the Environmental and Land Use Law Section is planned on Thursday, June 24, 1993 at 6:30 PM.

VI. Time and Place of Next Meeting

June 25, 1993, 8:30-11:30 AM, The Florida Bar Annual Meeting, Walt Disney World Dolphin Hotel, Lake Buena Vista, Florida

VII. Adjournment

Bylaws of the Administrative Law Section

Article I NAME AND PURPOSE

Section 1. Name. The name shall be "Administrative Law Section, The Florida Bar."

Section 2. Purposes. The purposes of this section are:

(a) to provide an organization within The Florida Bar open to members thereof in good standing having an interest in Administrative Law and Procedure on both the state and federal level.

(b) to provide a forum for discussion and exchange of ideas leading to the improvement and development of the fields of administrative law and procedure and agency practice, and to serve the public generally and The Florida Bar in interpreting and carrying out the professional needs and objectives in these fields.

Article II MEMBERSHIP

Section 1. Eligibility. Any member in good stand-

ing of The Florida Bar interested in the purposes of this section is eligible for membership upon application and payment of this section's annual dues. Any member who ceases to be a member of The Florida Bar in good standing shall no longer be a member of the section.

Section 2. Administrative Year. The administrative year of the section shall run concurrently with the administrative year of The Florida Bar.

Section 3. Annual Dues. The annual dues shall be the amount fixed by the executive council and approved by The Florida Bar, not to exceed \$25.00 per year per member. After an applicant has become a member, dues shall be payable in advance of each membership year and shall be billed by The Florida Bar at the time that regular dues of The Florida Bar are billed. Any member whose dues are in arrears for a period of 3 months after May 1st of any membership year, shall thereupon cease to be a member of the section.

continued . . .

BYLAWS

from preceding page

**Article III
OFFICERS**

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

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

(a) Chair. The chair shall preside at all meetings of the section and at all meetings of the executive council. The chair shall appoint all committees and committee chairs with the approval of the executive council, be responsible for all reports to be submitted to The Florida Bar, and perform all duties as customarily pertain to the office of chair. The chair shall be an ex-officio member of each committee of the section.

(b) Chair-elect. The chair-elect shall become chair in the event of the death, resignation, or failure of the chair to serve for whatever reason; provided, however, that in the case of temporary disability or absence of the chair, the chair-elect shall serve as acting chair only for the duration of the chair's disability or absence. The chair-elect shall be responsible for such other duties as the chair may designate. The chair-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. The secretary 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 amendments in a timely manner in accordance with the procedures of the budget committee of The Florida Bar.

Section 3. Term of Office.

(a) Chair. The term of office of the chair shall begin at the conclusion of the next annual meeting of the section after election chair-elect and shall end at the conclusion of the next succeeding annual meeting. Upon expiration of the chair's term, the chair shall be automatically succeeded by the chair-elect.

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

the chair.

Section 4. Election of Officers. The chair-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. Governing Body. There shall be an executive council composed of fourteen (14) members of the section, plus the chair, chair-elect, immediate past chair, secretary and treasurer, who shall be ex-officio voting council members. The executive council shall be the governing body of the section between the annual meetings of the section. The chair of the section shall be the chair 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 Rules Regulating 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 that 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, 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 recommendation made to other than 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 chair.

Section 2. Term of Office. All members of the executive council, excluding ex-officio voting council members, shall serve for a term of 2 years, the terms of the members being staggered so that 7 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 2 years thereafter, and 7 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 2 years thereafter.

Section 3. Election of Executive Council Members. The members of the executive council to be elected each year for 2 year terms shall be elected by a plurality vote of the membership in attendance at the annual meeting 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 expired term by vote of the executive council at its next meeting.

Article V COMMITTEES

Section 1. The annual meeting of the section shall be held at each annual meeting of The Florida Bar. The active members of the section attending any meeting of the section shall constitute a quorum for the transaction of business and a majority vote of those present shall be binding.

Section 2. There shall be at least 3 meetings of the executive council each year, 1 of which shall be held in conjunction with the annual meeting of The Florida Bar. The executive council may act or transact business herein authorized, without meeting, by written approval of a majority of the entire executive council.

In the event any member of the executive council, other than elected officers, is absent, without being excused by the chair in advance, from any 2 meetings during the fiscal year, the member's office shall be deemed vacant, and such vacancy shall be filled as otherwise provided in these bylaws.

Meetings of the executive council shall be subject to call by the chair of the section upon 15 days written notice to the members of the executive council. Those present at a meeting of the executive council duly called shall constitute a quorum and a majority vote of those present shall be binding.

Section 3. Special meetings of the entire membership of this section may be called by the executive council provided 30 days notice thereof shall be given to each member of the section.

Section 4. There shall be created the following permanent, standing committees within the section:

(a) Budget Committee

The budget committee shall prepare and revise proposed budgets for submission to the executive council for approval. The budget committee shall be composed of the section chair, immediate past chair, chair-elect and treasurer.

(b) Long Range Planning Committee

The long range planning committee shall develop long-range goals for the section, review the present activities of the section and submit reports thereof and recommendations to the executive council for adoption. The long range planning committee shall be composed of the immediate past chair of the section and such other persons as the chair may appoint.

(c) Legislative Committee

The legislative committee shall be composed of 3 members, appointed by the chair, who will also name the chair of the committee. The first 3 will be appointed for staggered terms of 1, 2 and 3 years, and thereafter the chair will appoint 1 member each year.

(1) Legislative Positions.

The legislative committee shall from time to time make recommendations to the executive council regarding requests for the section to adopt a legislative position. Such position shall require a 2/3 vote of the executive council to be adopted as the section position.

(2) Legislature in Session.

When the legislature is in session, the chair of the committee shall consult with the chair and, available, the chair-elect of the section. The chair of the committee may then act upon pending or proposed legislation in lieu of action by the executive council if it is not reasonably possible or feasible for the executive council to act. The chair of the executive council shall notify all members of the executive council of the section of such action taken as soon as it is reasonably possible to do so.

Article VI MISCELLANEOUS

Section 1. Action of The Florida Bar. No action of the section shall be represented or construed as the action of The Florida Bar until the same has been approved by The Florida Bar.

Section 2. Financial Obligations. Before payment, all financial obligations must first be approved in the manner specified by the executive council.

Section 3. Compensation and Expenses. No salary or other compensation shall be paid to any member of the section for performance of services to the section but the chair may authorize the payment of reasonable out-of-pocket expenses resulting from performances of such services.

Section 4. Amendments. These bylaws may be amended only by The Florida Bar upon recommendation made by the executive council of the section.

Section 5. No action of this section shall be contrary to the policies of The Florida Bar.

continued . . .

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