ADMINISTRATIVE LAW SECTION NEWSLETTER

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House Bill 7073: The Creation of the Agency for State Technology

by Brent McNeal

Effective July 1, 2014, the Agency for State Technology (AST) is established as Florida's technology agency. House Bill 7073, signed into law by Governor Rick Scott, sets forth a new enterprise information technology (IT) governance structure within Florida's executive branch. The bill repeals the sections of law that had established the defunct Agency for Enterprise Information Technology (AEIT) and creates AST as an entity administratively housed within the Department of Management Services (DMS) but not subject to control by DMS. AST is tasked with developing and implementing IT architecture and project management standards and overseeing agency IT projects that reach specified financial thresholds. Further, AST must create information security standards and address electronic access to public records. Finally, the Northwood and Southwood Shared Resource Centers are transferred from DMS to AST, creating a state data center. AST is responsible for managing and developing the state data center, as well as for recommending additional consolidation of agency data centers and IT services.

Policy Development and Project Oversight

AST is responsible for developing and publishing policies for management of the state's IT resources. AST will collaborate with DMS in establishing best practices for procuring IT products, planning IT resource acquisition, and conducting specified

See "House Bill 7073," page 17

From the Chair

by Daniel E. Nordby

I begin my term as chair of the Administrative Law Section with both gratitude and trepidation: gratitude to immediate past chair Amy Schrader for her tremendous work on behalf of the Section; trepidation because she leaves such large shoes to fill. Over the past year, the Section has continued to produce high-quality and informative publications and continuing education programs for its members. Amy's tenure also saw an unprecedented growth in the Section's outreach to law students and to young lawyers entering the practice of administrative law. I hope to continue these efforts in the upcoming year.

The Section's annual CLE schedule kicks off next month with our showcase program: the biennial Pat Dore Administrative Law Conference. Under the theme "APA Gridiron Games," conference co-chairs Cathy Sellers and Gar Chisenhall have assembled a powerhouse lineup of judges, agency counsel, and private practitioners to discuss the leading issues in Florida administrative law. I encourage everyone

See "From the Chair," next page

INSIDE:

FROM THE CHAIR
from page 1

to review the full program brochure, which is printed elsewhere in this newsletter, and mark their calendars for October 2nd and 3rd. The Section will offer its certification review CLE early next year and anticipates holding several short web-based programs over the course of the year. Stay tuned and let us know if you have ideas for useful CLE programming (or are yourself interested in presenting a CLE program).

I also look forward to continuing the Section's multi-year project to increase real and meaningful access to agency final orders. Over the past two years, Jowanna Oates, Patty Nelson, and Richard Shoop have compiled a comprehensive resource for attorneys interested in reviewing and researching final orders from most state agencies. This report is available on the Section's website at: http://www.flaadminlaw.org/pdf/information-about-accessing-agency-final-orders.pdf. The final phase of this project will include an assessment of whether legislative or regulatory changes to the APA's indexing requirements would be useful in expanding convenient access to these agency final orders.

Finally, I would be remiss if I did not renew the Section's perennial invitation to its members to become more involved in the work of the executive council. Whether you are interested in participating on the young lawyers or law school outreach committees, presenting a Section CLE program, writing an article for the newsletter or Bar Journal, or simply attending a meeting to learn more about the services the Section provides for attorneys practicing in the field of administrative law, the Section offers a variety of ways for its members to add their voices and perspective to the conversation. Please feel free to contact any member of the executive council for more information on any of these topics that may interest you.

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

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Appellate Case Notes

by Larry Sellers and Gigi Rollini

Agency Authority

Winick v. Department of Children and Family Services, 39 Fla. L. Weekly D1280 (Fla. 2d DCA 2014) (Opinion filed June 18, 2014).

Robert Winick appealed a hearing officer's final order affirming the Department of Children and Family Services' ("DCF") decision not to pay Mr. Winick's Medicare Part B premium under the "Qualified Individuals 1" Medicaid Program. DCF had assessed his application using an unadopted program policy manual that reflected DCF's interpretation of the federal guidelines and Florida Administrative Code. In so doing, DCF based its eligibility determination on the income limit for a one-person household, though Mr. Winick lived with his wife in a two-person household.

The Second District Court of Appeal concluded that formal rulemaking was not required for the manual on which DCF relied. The court explained that formal rulemaking is required if an interpretive rule purports to create certain rights or to require compliance, or otherwise to have the direct and consistent effect of law. On the other hand, formal rulemaking is not required when an agency issues an interpretive rule that does not create any new law, right, duty, or have any effect independent of the statute, but instead, reflects an agency's construction of a statute that has been entrusted to the agency to administer, and does not modify or add to a legal norm based on the agency's own authority. Because DCF represented the manual as an interpretive aid that created no substantive requirements, no formal rulemaking was required.

The Second District, however, rejected DCF's argument that the court lacked jurisdiction because Mr. Winick did not challenge the manual as an unpromulgated rule. The court held that argument presented at hearing that the eligibility requirements were unreasonable, improper, and unsupported by statutory authority sufficiently challenged the manual. Nor did DCF give Mr. Winick any notice prior to the hearing that it relied on the manual to deny benefits. Moreover, because Mr. Winick sought monetary relief that was not available in a rule challenge proceeding, no exhaustion of administrative remedies was required. Mr. Winick's case also fell under the exhaustion exception that applies where it would subject the complainant to unreasonable delay or hardship.

Finally, the court concluded that the federal Medicaid guidelines require that applicants' incomes be compared to the income limits for a household of their actual family size, and DCF failed to consider that Mr. Winick actually lived in a two-person household. Had DCF considered actual family size, it would have determined the Mr. Winick was eligible for benefits.

Accordingly, the Second District concluded that DCF and the hearing officer erred in determining that Mr. Winick is not eligible for the program, and reversed.

Attorney's Fees

Agency for Health Care Administration v. Bayfront Medical Center, Inc., et al, 39 Fla. L. Weekly D1486 (Fla. 1st DCA 2014) (Opinion filed July 16, 2014).

The Agency for Health Care Administration (AHCA) filed an appeal of a final order of the Division of Administrative Hearings that found that AHCA was operating under an unpromulgated rule. After the issues were fully briefed and the court heard oral arguments, AHCA filed a notice of voluntary dismissal. The court dismissed the appeal, but wrote to make clear that AHCA may not avoid its obligation to pay appellees' reasonable appellate attorney's fees by filing a belated notice of voluntary dismissal.

The court cited section 120.595(4)(a), Florida Statutes, which states that "if the appellate court or administrative law judge determines that" the agency is operating under unpromulgated rule, "a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that a statement is required by the federal government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds."

Here, the ALJ found that AHCA was operating under an unpromulgated rule that was not required by the federal government. The court determined that the ALJ's findings entitle appellees to reasonable attorney's fees during the entire duration of these proceedings. Accordingly, the court accepted the voluntary dismissal, but granted appellees' motion for appellate attorney's fees and remanded for determination of the amount if the parties are unable to reach an agreement.

Burden of Proof in Enforcement

South Florida Water Management District v. RLI Live Oak, LLC, 139 So. 3d 869 (Fla. 2014) (Opinion filed May 22, 2014).

The South Florida Water Management District sought review of a decision by the Fifth District Court of Appeal, which certified a question to the Florida Supreme Court. The Court accepted jurisdiction, but rephrased the question as follows:

> WHERE THE LEGISLATURE STATUTORILY AUTHORIZES A STATE GOVERNMENTAL AGENCY TO RECOVER A "CIVIL PENALTY" IN A "COURT OF COMPETENT JURISDICTION" BUT DOES NOT SPECIFY THE AGENCY'S BURDEN OF PROOF, IS THE AGENCY REQUIRED UNDER *DEPARTMENT OF BANKING & FINANCE V. OSBORNE STERN & CO.,* 670 So. 2d 932 (Fla. 1996), TO PROVE THE ALLEGED VIOLATION BY CLEAR AND CONVINCING EVIDENCE BEFORE THE COURT MAY ASSESS THE CIVIL PENALTY?

The Court answered the rephrased

continued...

APPELLATE CASE NOTES
from page 3

certified question in the negative, and held that where the Legislature statutorily authorizes a state governmental agency to recover a "civil penalty" in a "court of competent jurisdiction," but does not specify the agency's burden of proof, the agency is not required under Osborne to prove the alleged violation by clear and convincing evidence, but rather by preponderance of the evidence. Accordingly, the Supreme Court reversed the district court's decision.

The Court distinguished its holding in Osborne, a case involving "administrative fines" as opposed to "civil penalties" that were the subject of the current appeal. Notably, the Court did not recede from its prior ruling in Osborne that an agency must prove alleged violations by clear and convincing evidence in order to impose "administrative fines."

Emergency Suspension Orders
Failer v. Dept. of Health, 139 So. 3d 359 (Fla. 1st DCA 2014) (Opinion filed April 22, 2014).

Dr. Failer appealed the emergency suspension order ("ESO") entered by the Department of Health suspending his license to practice osteopathic medicine, arguing the Department failed to rule on his request for a formal hearing and requesting a stay of the ESO pending its resolution. The First District Court of Appeal granted the relief, ordered the Department to rule on the request for hearing, and imposed a stay, subject to certain conditions.

Based on individualized findings of fact as to several patients, the ESO found that Dr. Failer's failure to perform basic functions required of all physicians evidenced a pattern and propensity to practice below the minimum acceptable standard of care, putting his current and future patients at risk of harm. The Department also concluded that restricting his ability to prescribe scheduled controlled substances would not adequately protect the public health, safety, or welfare. Dr. Failer's license was immediately suspended, and a proceeding seeking formal discipline against his license was pledged to be promptly instituted.

The court explained that the Department may issue an emergency suspension of a party's license if the agency determines such action is required due to an immediate serious danger to public health, safety, or welfare. However, the Department can take only that action necessary to protect the public interest under the emergency procedure. Moreover, the Department must state in writing the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare, and its reasons for concluding that the procedure used is fair under the circumstances. Specifically, the factual allegations in an ESO must demonstrate that: (1) the complained of conduct is likely to continue; (2) the order is necessary to stop the emergency; and (3) the order is sufficiently narrowly tailored to be fair.

While summary suspension, restriction, or limitation may be ordered, a suspension or revocation proceeding must be promptly instituted and acted upon. Importantly, if an agency receives a request for hearing, it must grant or deny the request within 15 days of receiving the request.

On appeal, when evaluating the sufficiency of an ESO, an appellate court is limited to examining the face of the order itself to determine if the elements were alleged with sufficient detail. After reviewing an agency's action, the appellate court may order the agency to perform an action required by law, or remand the matter for additional agency proceedings.

In his petition, Dr. Failer requested two forms of relief from the appellate court: (1) require the Department to rule on his hearing request; and (2) stay the ESO, subject to reasonable restrictions on his ability to prescribe controlled substance medications.

The First District granted the requested relief. On the hearing request, the Department was required by statute and case law to either grant or deny Dr. Failer's request within 15 days of receipt, which the record did not indicate had been done.

Regarding the stay, the court concluded that taking the factual allegations in the ESO as true, the danger to the public related to his right to prescribe scheduled medications. Therefore, removing his authority to prescribe scheduled medications would remove the danger to public health, safety, and welfare. Because the Department did not explain why removing the right to prescribe the medications in question would not sufficiently protect patients from the primary harm posed pending resolution of disciplinary proceedings, the court stayed the ESO pending a formal hearing and final order, subject to the Department's reasonable restrictions on Dr. Failer's ability to prescribe scheduled controlled substances.

Licensing
West Flagler Associates, Ltd. v. Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, 139 So. 3d 419 (Fla. 1st DCA 2014) (Opinion filed May 27, 2014).

West Flagler Associates, Ltd. sought judicial review of a final order of the Division of Pari-Mutuel Wagering denying its application for a permit to conduct summer jai alai under section 550.0745(1), Florida Statutes. The statute states that the owner or operator of a pari-mutuel permit (one authorized to conduct pari-mutuel pools on exhibition sports in a county having five or more such permits) who has the lowest handle (is the lowest performing economically) for "the 2 consecutive years next prior to filing an application" may apply to convert its permit to a summer jai alai permit.

Hialeah Park, which operates a quarter horse permit in Miami-Dade County, had the lowest handle among the (more than five) qualifying permit holders in that county for the 2010-11 and 2011-12 state fiscal years. Though it was eligible to convert its quarter horse permit to a summer jai alai permit, Hialeah Park declined to do so. This triggered the provisions in section 550.0745(1), Florida Statutes, which state: "If a permittee who is eligible under this section to

convert a permit declines to convert, a new permit is hereby made available in that permittee's county to conduct summer jai alai games as provided by this section, notwithstanding mileage and permit ratification requirements." § 550.0745(1), Fla. Stat. Because Hialeah Park turned down its statutory right to convert its quarter horse permit to a summer jai alai permit, West Flagler sought the "new permit" made available in Miami-Dade County under this portion of the statute.

The Division denied West Flagler's application. It reasoned that, because it had issued a summer jai alai permit the previous year (also to West Flagler) based on data from the 2009-10 and 2010-11 state fiscal years (Hialeah Park had the lowest handle for these two fiscal years but declined to convert), it could not use the 2010-11 data again—this time in conjunction with 2011-12 data—to issue a new permit for the most recent two-year period. Under the Division's interpretation, the "statute clearly requires that the lowest mutuel play must come from the same permitholder for 2 consecutive years prior to filing an application under the section." Thus, once a fiscal year's data is used to grant a summer jai alai permit, that same fiscal year data may not be used in granting another summer jai alai permit. In essence, the Division reads the statute as allowing one summer jai alai permit to be made available, at most, every two years. The Division entered a final order to this effect, and West Flagler sought review.

The court acknowledged the "well established proposition that an administrative construction of a statute given by those charged with its enforcement and interpretation is entitled to great weight, and the courts will not depart from such a construction unless it is clearly erroneous or unreasonable." But the court concluded that the Division's interpretation was clearly erroneous, finding that the plain and unambiguous language of section 550.0745(1), Florida Statutes, requires the Division to issue a new summer jai alai permit each and every year if the lowest handling permitholder declines to convert its permit. "[T]ry as we might, we cannot read the language of the statute as the Division has implemented it in this case. The statute plainly provides that the permitholder with the lowest handle for 'the 2 consecutive years next prior to filing an application' may apply for a summer jai alai permit, and, if it declines to do so, a 'new permit' is made available." The court concluded that the statutory language envisions a rolling two-year period rather than the at-most-every-other-year approach the Division urged. Accordingly, the court reversed the final order with directions to reinstate West Flagler's application for the new summer jai alai permit at issue.

Public Records

Chandler v. City of Greenacres, 140 So. 3d 1080 (Fla. 4th DCA 2014) (Opinion filed June 11, 2014).

Chandler appealed an order of the trial court that dismissed his petition for writ of mandamus to compel production of public records based on a finding that the petition failed to show that Chandler had standing to bring the action.

Chandler's petition alleged that he made a public records request by e-mail to the city. The petition quoted from and attached this e-mail, which showed that it was sent from a specific e-mail address. Although the attached e-mail did not include a person's name, the body of the e-mail used the pronouns "I" and "me." The petition also alleged that Chandler had sent three other e-mails to city employees requesting documents. These e-mails, also attached as exhibits to the petition, showed they were sent from the same e-mail address.

The city clerk responded to the e-mails by notifying the sender that the sender must fill out a form on the city's web page for obtaining public documents. No form was filled out, and five months later, a sender from the same e-mail address again e-mailed the city and asked when the sender would receive the documents. Again, the clerk informed the sender that the city's form needed to be filled out for the city to determine the cost of producing the documents.

A month later, Chandler filed a petition for writ of mandamus demanding production of certain public records, and also seeking attorney's fees and costs under the Public Records Act. The petition alleged that appellant had sent the e-mails and that he was a "person" as used in the Act, section 119.07(1), Florida Statutes. The city moved to dismiss the petition, arguing that Chandler lacked standing because the petition did not allege that he was a "stakeholder in interest" in the controversy nor did it demonstrate he had a connection with the e-mail address from which the requests were sent. It also argued that he needed to fill out the city's form in order to secure an estimate of the cost of production. However, after Chandler filed the petition, the city provided him an estimate of $0.90 to obtain the public records requested in the e-mail. The trial court granted the city's motion and dismissed the petition, prompting the appeal.

On appeal, the city argued that Chandler's petition was properly dismissed because the petition failed to establish an "identifiable connection" between appellant and the e-mail address at issue. The court rejected this argument, finding that the petition alleged that appellant had made a public records request via e-mail, and attached to the petition were the e-mails sent from the e-mail address at issue. The court therefore concluded that the petition sufficiently alleged standing to preclude dismissal.

The city also argued that it did not improperly deny access to the requested records, but rather wanted to obtain payment prior to furnishing the records. The city contended that the requirement for the requester to fill out the city's form was merely an attempt to obtain an address or other identifiable source of payment of the associated costs.

The court rejected this argument, agreeing with the Attorney General that "[a] person requesting access to or copies of public records, therefore, may not be required to disclose his [or her] name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records." The court held that the city could not properly

continued...

APPELLATE CASE NOTES
from page 5

condition disclosure of the public records, to the then-anonymous requester on filling out the city's form and giving an "address or other identifiable source for payment of the associated costs." The court found that the city could have sent an estimate of costs through e-mail to the requester just as it could through regular mail, had the request been made via paper by an anonymous requester. Requiring Chandler to provide further identifying information prior to disclosure could have a chilling effect on access to public records and is not required by the Public Records Act. Accordingly, the court reversed and remanded for further proceedings.

State Employees

Delong v. Florida Fish & Wildlife Conservation Comm'n, 39 Fla. L. Weekly D1128 (Fla. 3d DCA 2014) (Opinion filed May 28, 2014).

Delong appealed a final order of the Public Employees Relations Commission (PERC) dismissing the appeal of his termination for lack of jurisdiction. Delong was hired as a sworn law enforcement officer by the Department of Environmental Protection (DEP) in 2007. In 2012, the Legislature enacted a law that consolidated the DEP's Division of Law Enforcement with the Division of Law Enforcement of the Florida Fish & Wildlife Conservation Commission (FWC). Under that law, employees transferred to FWC were to retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.

The new law's effective date was July 1, 2012, and on that date Delong was transferred from DEP to FWC. Later that month, Delong was involved in a motor vehicle crash, for which he was cited for leaving the scene of an accident involving property damage. FWC delivered notice to Delong that it would be terminating his employment. FWC later confirmed its dismissal of Delong with a hand-delivered letter outlining the basis for the dismissal. The letter included notice that Delong had been on "probationary status" in Florida's career service system, and therefore had no right to appeal his termination to PERC.

Nevertheless, Delong appealed his dismissal to PERC. FWC moved to dismiss the appeal, alleging lack of jurisdiction due to his probationary status. Specifically, FWC asserted that Delong became a new employee of FWC on July 1, 2012, when he was transferred from DEP and that he was required to complete at least one year of probationary employment with FWC for PERC to have jurisdiction to hear his appeal.

FWC relied on rule 60L-33.003(2)(d), which provided that an employee shall be given probationary status "[u]pon original appointment, promotion or demotion to a different broadband level, or any time an employee moves between agencies," unless "the legislature has designated that an employee shall be moved but shall not have status as a new employee." This rule was promulgated by the Division of Management Services, the agency directed by statute to promulgate uniform rules governing state agency employee employment status.

After conducting an evidentiary hearing, a PERC hearing officer issued a recommended order determining that PERC lacked statutory authority to hear the appeal from a probationary employee challenging his dismissal. PERC adopted the recommendation in its final order.

Concluding that the Legislature could have, but did not make employees transferred from DEP to FWC anything other than probationary employees, the Third District affirmed, determining that the PERC decision was not clearly erroneous.

Statutory Construction

Choice Plus LLC in re Estate of Inez Eleanor Rigley v. Florida Department of Financial Services, Bureau of Unclaimed Property, 135 So. 3d 1163 (Fla. 1st DCA 2014).

Choice Plus LLC filed a petition for writ of mandamus seeking to compel the Department of Financial Services (DFS) to determine its claim to property filed under section 717.124, Florida Statutes. The court dismissed the petition as moot, but wrote an opinion to address a DFS argument that mandamus was not appropriate because the timeframes in section 717.124(1), Florida Statutes, are directory rather than mandatory. The court noted that while DFS certainly has the discretion to deny a claim if warranted, the Legislature has clearly provided timeframes under which DFS is to act. Section 717.124(1)(c), Florida Statutes, expressly requires that "within 90 days after receipt of the claim, or the response of the claimant or the claimant's representative to the department's request for addition information, whichever is later, the department shall determine each claim." The court also cited Fla. Caucus of Black State Legislators, Inc. v. Crosby, 877 So. 2d 861, 863 (Fla. 1st DCA 2004) ("Because the legislature chose to use the word 'shall' ... the Department's obligations are not discretionary.").

Diaz & Russell Corporation v. Department of Business and Professional Regulation, 140 So. 3d 662 (Fla. 3d DCA 2014) (Opinion filed May 28, 2014).

Diaz & Russell Corporation and Mr. Diaz appealed from a final administrative order determining that they violated the statutes regulating the practice of architecture in Florida by offering and rendering non-exempt architectural services for a "design-build" project.

Mr. Diaz is a licensed general contractor and president of appellant Diaz & Russell Corporation (D&RC). Mr. Diaz and D&RC are not registered or certified to practice architecture. In 2010, Mr. Diaz submitted a written design-build proposal for a small commercial job. The proposal did not identify the specific Florida-licensed architect hired by Mr. Diaz to prepare the architectural drawings for the project, but the architect was identified on the drawings prepared and submitted to the municipal building department.

The Board of Architecture and Interior Design filed a complaint against Mr. Diaz and D&RC for practicing architecture without a certificate of authorization as required by sections 481.219 and 481.233, Florida Statutes. Mr. Diaz and D&RC asserted that their design-build proposal and services were authorized by a specific statutory exemption in section 481.229(3), Florida Statutes.

Following an administrative hearing, the ALJ submitted a recommended order, which was adopted by the Board in its final order, concluding "the Florida licensed architect was not identified in the written proposal offering architectural services" and thus that "the design-build exception is not applicable to the instant case." Mr. Diaz and D&RC were fined a total of $10,000.00, and costs were assessed against them.

The court reversed, determining that the requirements of the design-build exemption in section 481.229(3), Florida Statutes, were satisfied in this case. The court concluded that the Board's and the ALJ's interpretation of the statute—requiring the architect to be identified in the contract—imposes requirements that are not found in the statutory design-build exemption.

Although "mindful of [its] obligation on review to afford the Board's interpretation of the statute 'great deference,'" the court reversed the conclusion of law based on an erroneous interpretation of the statute. The court held that the statute does not explicitly require the contractor to identify an individually named architect before offering the design-build services.

The court also noted that the Board was authorized to promulgate administrative rules to implement the relevant provisions of chapter 481, Florida Statutes, and given the ubiquity of design-build contracts in Florida, either the legislative or the formal rulemaking process appeared the appropriate forum to develop mandatory disclosure requirements in such contracts. The court concluded that in the absence of an explicit statute or rules imposing such disclosure requirements, the Board's interpretation in the present case must be overturned. Accordingly, the court reversed and remanded with direction to vacate the final order, fine and impositions of costs.

Putnam County Environmental Council v. St. Johns River Water Management District, 136 So. 3d 766 (Fla. 1st DCA 2014) (Opinion filed April 25, 2014).

The Putnam County Environmental Council appealed from a final order entered by the Secretary of the Florida Land and Water Adjudicatory Commission (FLWAC) denying the Council's request to review the Fourth Addendum to St. Johns River Water Management District's 2005 Water Supply Plan. The Council requested FLWAC to determine the Fourth Addendum improperly identifies surface water withdrawals from the St. Johns River and the Ocklawaha River as "alternative water supplies" under section 373.109(1), Florida Statutes, and to order that such designations be stricken and/or specifically limited to capture during wet weather flows. The FLWAC Secretary, acting alone, declined review because the Secretary determined FLWAC was without jurisdiction pursuant to section 373.114, Florida Statutes.

Section 373.114(1), Florida Statutes, requires FLWAC (comprised of the Governor and Cabinet) to determine whether a request for review meets statutory jurisdictional grounds. Here, the Secretary acted alone. The parties agreed that this constituted error. However, the court found that this procedural error does not mandate reversal unless the "fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure." § 120.68(7)(c), Fla. Stat. The procedure afforded to appellant was not unfair; so the only question was whether the Secretary's error may have impaired the correctness of the action.

FLWAC has jurisdiction to review "any order or rule of a water management district" if it finds: (i) the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or (ii) if "the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from the standpoint of agency precedent." § 373.114(1)(a), Fla. Stat. Relying on its prior opinion, the court concluded the Commission lacked jurisdiction under the first ground because the order approving the Plan does not authorize any activity. Wash. Cnty. v. NW. Fla. Water Mgmt. Dist., 85 So. 3d 1127, 1128-29 (Fla. 1st DCA 2012).

However, the court found that the Plan, by approving certain options and listing them for general use, raises a policy issue sufficient to invoke FLWAC's jurisdiction under the second ground in the statute. Accordingly, the court reversed the order declining review.

Res Judicata

Florida Fish and Wildlife Conservation Commission v. Wakulla Fishermen's Ass'n, 141 So. 3d 723 (Fla. 1st DCA 2014) (Opinion filed July 7, 2014).

The Florida Fish and Wildlife Conservation Commission (FWC) appealed a final judgment enjoining enforcement of article X, section 16, of the Florida Constitution (the so-called "Net Ban"), and Florida Administrative Code rules 68B-4.002, 68B-4.0081, and 68B-39.0047, and enjoining FWC's authority to adopt rules pursuant to article IV, section 9, of the Florida Constitution with respect to the use of a "gill net" or an "entangling net."

The court reversed, finding that article X, section 16 and the implementing rules had been the subject of almost continuous litigation since proposal of the constitutional amendment and that the issues raised by the plaintiffs had already been litigated in prior cases; as such, they were barred by the doctrine of res judicata.

The court also held that the trial judge erred in enjoining enforcement of the constitutional amendment and the Commission's authority to adopt implementing rules, as this relief was not requested by the parties.

Standing

South Broward Hosp. Dist. v. Agency for Health Care Admin., 141 So. 3d 678 (Fla. 1st DCA 2014) (Opinion filed June 24, 2014)

South Broward Hospital District (the "District") appealed a final order entered by the Agency for Health Care Administration ("AHCA") dismissing the District's request for a formal administrative hearing. On appeal, the First District Court of Appeal concluded that the District met the requirements for third-party standing under Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478, 479 (Fla. 2d DCA 1981) and reversed and remanded for an administrative hearing pursuant to section 120.57, Florida Statutes.

The dispute stemmed from section

continued...

APPELLATE CASE NOTES
from page 7

409.915, Florida Statutes, which addresses county contributions to Medicaid. Pursuant to section 409.915(12), Florida Statutes, AHCA adopted rules to administer the statute. In particular, AHCA adopted rule 59G–1.025 which allows counties to submit either advance refund requests or back-end refund requests. If AHCA denies any portion of the county's request, it provides the county with notice of administrative rights under sections 120.569, 120.57, and 120.573, Florida Statutes.

Using this refund process, Broward County filed a refund request for a Medicaid contribution invoice that included sums that the District was obligated to pay as part of its share as a special taxing district. AHCA sent a final determination notice, granting the refund request in part and denying it in part. Broward County did not seek review of AHCA's determination.

The District, however, filed a request for a formal administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes, asserting it was affected by AHCA's determination because it had been charged $149,943.24 of the $478,228.73 that AHCA declined to refund to Broward County.

AHCA entered an order dismissing the District's request for formal administrative hearing. AHCA concluded that the District lacked standing because its substantial interests had not been affected by AHCA's determination, where the monies were owed by Broward County, not the District. The order concluded that it was not AHCA's determination that resulted in the injury to the District, but Broward County's decision to seek a share of the monies owed to AHCA.

On appeal, the First DCA rejected that it was required to give any deference to AHCA's legal analysis in the order on appeal because the standing issue involves application of general principles of administrative law over which AHCA has no special expertise.

Accepting the allegations in the District's administrative petition as true, as the appellate court noted it must, the court considered whether the District had the requisite standing to seek an administrative hearing. Applying the test set forth in Agrico, the court found that the District established a substantial interest and met both prongs of the test. Under the first prong, the District established a real and immediate injury because the District's hearing petition alleged that the District will not receive a refund of almost $150,000 as a result of AHCA's decision to deny the County's refund request. The District also established that the injury, i.e., being required to contribute funds that the District alleges AHCA erroneously charged to the County, is the type that section 409.915, Florida Statutes, was designed to protect.

The First DCA therefore reversed AHCA's final order dismissing the District's request for a formal administrative hearing for lack of standing, and remanded with directions that AHCA refer the request to the Division of Administrative Hearings for formal hearing.

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DOAH CASE NOTES

Substantial Interest Hearings

Senior Lifestyles, LLC, d/b/a Kipling Manor Retirement Center v. AHCA, DOAH Case No. 13-4660 (Recommended Order June 10, 2014).

FACTS: Senior Lifestyles, LLC, d/b/a Kipling Manor Retirement Center ("Kipling") is a 65-bed assisted living facility located in Pensacola, Florida. On September 6, 2013, AHCA issued a Notice of Intent to Deny Renewal of Kipling's operating license. Kipling requested a hearing, and the case was referred to DOAH.

OUTCOME: The ALJ recommended that AHCA rescind its Notice of Intent to Deny. In the course of doing so, the ALJ expressed some strong views about the conduct of the parties and their counsel. The ALJ noted that "[n]either party seemed willing to compromise; view the evidence objectively; or pursue resolution; there was instead an air of all-out war during this entire proceeding." Those attitudes were evident from the parties' proposed recommended orders, which the ALJ described as being "so completely prejudiced in favor of their respective position[s] and fraught with completely biased conclusory statements as to the facts, that it was hard to glean any helpful or objective arguments from them." The ALJ also admonished the attorneys for being excessively adversarial: "While strong client advocacy has a place, it can sometimes do more damage to the ultimate decision making process than is necessary. Although both counsel in this proceeding are competent professionals, and their efforts are commended, the animosity between them adversely affected their effectiveness in this case."

Denise Strickland v. Eve Management, Inc., KA and KM Development, DOAH Case No. 14-1935 (Recommended Order June 24, 2014).

FACTS: In June 2011, Denise Strickland (an African-American female) traveled to the Lake Eve Resort ("the Resort") in Orlando, Florida, for a family reunion. Upon her arrival, Ms. Strickland was met by two police officers and informed that her party was being evicted. While Ms. Strickland spent the next several hours in the lobby meeting with various family members and waiting for Resort staff to reverse credit-card charges, no one associated with the Resort explained why she and her family members were being evicted. After Ms. Strickland filed an Amended Public Accommodation Complaint of Discrimination against the Resort on January 3, 2014, the Florida Commission on Human Relations ("FCHR") determined there was reasonable cause to believe that an unlawful public accommodation practice occurred. Ms. Strickland then filed a Petition for Relief and Administrative Hearing, and FCHR referred the case to DOAH.

OUTCOME: Section 760.11, Florida Statutes, requires a victim of public accommodation discrimination to file a complaint with FCHR within 365 days of the alleged violation. Ms. Strickland did not timely file her complaint within 365 days of the alleged violation. However, rule 60Y-5.001 provides that a complaint can relate back if the otherwise untimely complaint: (1) states that another complaint naming the same respondent is properly before FCHR and identifies that timely complaint; (2) alleges the same or additional facts as alleged in the timely complaint; and (3) would have been timely if it had been filed at the time of, or subsequent to, the filing of the other complaint.

The ALJ, sua sponte, officially recognized DOAH's files in related cases, in which other members of Ms. Strickland's family had filed timely complaints of discrimination based on the same incident described in Ms. Strickland's complaint. See Harrington, et al. v. Eve Management, Inc., KA and KM Development, DOAH Case Nos. 14-0029, 14-0030, 14-0031, 14-0032, 14-0033, 14-0035, 14-0041, 14-0158, 14-0159, 14-0160 (Recommended Order May 28, 2014). Despite concluding that Ms. Strickland's complaint did not identify the timely complaints filed by her family members, the ALJ determined Ms. Strickland's complaint related back to her family members' timely complaints: "While [Ms. Strickland]'s late-filed complaint does not specifically mention a particular pending complaint of one of her relatives, it describes the events sufficiently to relate back to the complaints timely filed by her relatives arising out of the same events at the Resort on June 22, 2011." The ALJ further concluded there was no prejudice to the Resort because it evicted approximately 55 family members on June 22, 2011, and certainly "knew or should have known" of other potential complainants. Ultimately, the ALJ recommended that FCHR issue a final order finding the Resort committed an act of public accommodation discrimination.

Velda K. Miller v. Bd. of Nursing, DOAH Case No. 14-0877 (Recommended Order June 30, 2014).

FACTS: The Board of Nursing ("the Board") regulates certified nursing assistants ("CNAs") and utilizes a contractor, Prometric, to process CNA applications. Velda K. Miller took a 40-hour CNA training program at a facility and her trainer assisted with completing the three-page CNA application. On page 3, Ms. Miller elected an option stating she would take the CNA examination at the facility that provided her training program. By selecting this option, Ms. Miller was required to submit her application to her trainer, and the trainer was responsible for filing the application with Prometric.

continued...

DOAH CASE NOTES
from page 9

Ms. Miller signed her application on September 10, 2012, and it was submitted to Prometric on October 31, 2012. While the second page of the application received by Prometric disclosed no criminal offenses, a subsequent background check revealed Ms. Miller committed five non-disqualifying criminal offenses between 1984 and 1987. The Board issued a Notice of Intent to Deny asserting Ms. Miller violated sections 464.204(1)(a) and 456.072(1)(h), Florida Statutes, by attempting to obtain a nursing license by bribery, misrepresentation, or deceit. In challenging the Board's intended denial, Ms. Miller asserted she filled out an application disclosing her offenses and speculated that her trainer inexplicably inserted a different second page between the first and third pages that Ms. Miller had filled out.

OUTCOME: The ALJ concluded that the Board failed to carry its burden of presenting evidence that Ms. Miller attempted to obtain certification by misrepresentation or deceit. Because the style of the markings on page 2 of the application received by Prometric were different from the same kind of markings on pages 1 and 3, "the evidence did not establish that [Ms. Miller] even made the representation in question, much less that she made the representation knowingly, with intent to misrepresent her background or deceive [the Board]." Furthermore, the ALJ noted that having an applicant submit a completed application to someone other than Prometric or the Board "creates a break in the chain of custody." Accordingly, the marks on the second page cannot be attributed to Ms. Miller when they do not match the marks on the first and third pages which Ms. Miller authenticated as her handwriting. The ALJ also concluded the Board could not assert any other grounds for denying Ms. Miller's application because the Board's Notice of Intent to Deny gave as the sole reason for denial that Ms. Miller had attempted to obtain certification by misrepresentation or deceit, and section 120.60(3), Florida Statutes, required the Board to state with particularity its reasons for denying Ms. Miller's application. The ALJ recommended that Ms. Miller's application be approved and that she be allowed to take the examination for CNA certification.

Disciplinary/Enforcement Actions

Dep't of Fin. Servs. v. Barber Custom Builders, Inc., DOAH Case No. 13-2536 (Recommended Order April 30, 2014).

FACTS: On June 5, 2013, the Department of Financial Services ("DFS") issued a stop-work order alleging Barber Custom Builders, Inc. ("Barber") failed to secure workers' compensation insurance as required by chapter 440, Florida Statutes. The stop-work order also required Barber to cease all business operations in Florida. Barber responded by disputing DFS's allegation and requesting an administrative hearing.

OUTCOME: Barber argued that the stop-work order was an immediate final order that failed to satisfy section 120.569(2)(n), Florida Statutes, by setting forth no findings that the public welfare was endangered. The ALJ rejected this argument by noting section 440.107(7)(a), Florida Statutes, deems an employer who has failed to secure workers' compensation insurance to be "an immediate serious danger to public health, safety, or welfare . . ." Thus, "no separate finding by the agency head reciting the facts that establish such a danger is necessary." The ALJ also concluded the stop-work order was more like an administrative complaint than a final order in that the stop-work order was accompanied by a notice of rights that advised Barber of its right to request an administrative hearing. The ALJ also concluded that the Legislature would have used the term "immediate final order" if it had intended for a stop-work order to be considered an immediate final order. In support of that conclusion, the ALJ noted several instances in which the Legislature has expressly defined certain orders as within the scope of section 120.569(2)(n), Florida Statutes. Ultimately, the ALJ recommended that DFS enter a final order assessing a penalty of $2,272.31 against Barber.

In Re: David Rivera, DOAH Case No. 13-1043EC (Recommended Order June 6, 2014).

FACTS: David Rivera served in the Florida House of Representatives from 2002 through 2010 and in the U.S House of Representatives from 2010 through 2012. Mr. Rivera briefly ran for the Florida Senate in 2010 and opened a campaign account for that purpose. Mr. Rivera also opened accounts to finance campaigns in 2003, 2004, and 2008 for State Committeeman, a private office within the Republican Party of Florida. During his tenure in the Florida House, the State of Florida paid reimbursement into Mr. Rivera's personal bank account for travel and related expenses incurred during official state business. On October 24, 2012, the Commission on Ethics ("the Commission") alleged that those expenses had been covered by one of his campaign accounts and that Mr. Rivera thus violated section 112.313(6), Florida Statutes, by securing additional income.

OUTCOME: In order to establish a violation of section 112.313(6), Florida Statutes, a public officer or employee must have acted with "wrongful intent." While noting direct evidence of wrongful intent is often unavailable, the ALJ concluded wrongful intent can be established through circumstantial evidence and inferred from a public servant's actions. Because Mr. Rivera signed and submitted travel reimbursement requests to the State of Florida and personally signed campaign account checks used to pay off his credit card balances, the ALJ ultimately concluded the Commission proved the mens rea element of a section 112.313(6), Florida Statutes, violation and that Mr. Rivera violated the statute.

Attorney's Fees

Stephen Ogles, LLC & RL Ogles Roofing, LLC v. Dep't of Fin. Servs., Div. of Workers' Comp., DOAH Case Nos. 13-4357F and 13-4424F (Final Order April 22, 2014).

FACTS: On June 12, 2013, the Department of Financial Services ("DFS") issued stop-work orders and penalty assessments against Stephen Ogles, LLC and RL Ogles Roofing, LLC ("the LLCs") for failing to secure workers' compensation insurance. After DFS dismissed its prosecution, the LLCs petitioned for attorney's fees and costs pursuant to section 57.111, Florida Statutes.

OUTCOME: The ALJ denied the petitions after concluding DFS had substantial justification to issue the stop-work orders. While not material to his ruling, of interest is the ALJ's reference to conflicting decisions at DOAH with regard to whether LLCs are encompassed within the definition of a "small business party" in section 57.111, Florida Statutes, and thus eligible to seek attorney's fees under the statute. Compare John Gerrity Wade, A.R.N.P., R.N. v. Dep't of Health, Bd. of Med., DOAH Case No. 02-3027F (Final Order Feb. 3, 2003) with Charles DeMoss Enter., LLC v. Dep't of Fin. Serv., Div. of Workers' Comp., DOAH Case No. 08-4865F (Final Order May 21, 2009).

Non-Final Orders

St. Lucie County Sch. Bd. v. McPherson, DOAH Case No. 13-3850TTS (Non-final Order Jan. 21, 2014); and *Broward County Sch. Bd. v. Tersigni*, DOAH Case No 13-2900TTS (Non-final Order Jan. 23, 2014).

FACTS: These two cases arose from notices of intent by the respective school boards to terminate the employment of a paraprofessional (in the first case) and a teacher (in the second case) for their actions that allegedly amounted to just cause for termination, and both Respondents requested administrative hearings. The same acts giving rise to the termination proceedings also gave rise to criminal charges against the Respondents. In both cases, issues regarding assertion of the Fifth Amendment privilege against self-incrimination arose before the final administrative hearings.

In the first case, the Respondent, Ms. McPherson, moved for a continuance shortly before the final hearing was scheduled to begin, until resolution of the criminal proceeding. In support thereof, Ms. McPherson argued that her participation in the administrative proceeding could violate her Fifth Amendment privilege against self-incrimination.

In the second case, after the matter was referred to DOAH, the Respondent, Ms. Tersigni, invoked her Fifth Amendment privilege in a motion for a blanket protective order to excuse her from being deposed or answering any interrogatories. In support of her request, Ms. Tersigni asserted there were no relevant questions, written or at deposition, that she could answer without incriminating herself in the parallel criminal proceeding.

OUTCOMES: The ALJ canceled the McPherson hearing and placed the case in abeyance. In explaining the justification behind that decision, the ALJ noted that the School Board's right to prosecute its case without undue delay must be balanced against Ms. McPherson's right to defend herself in the administrative proceeding without incriminating herself in the criminal case. The ALJ concluded that the School Board's case would not be significantly prejudiced because a videotape recording of the incident lessened the importance of witness memory and availability. In addition, any delay of the administrative hearing would be minimal with the criminal trial scheduled to begin one week later and expected to be concluded within two weeks. As for Ms. McPherson's interests, the ALJ noted that proceeding with the administrative hearing as scheduled could force her to forego testifying during the administrative hearing and significantly impair her defense. Finally, the ALJ accounted for judicial economy by noting that if Ms. McPherson were found guilty in the criminal case, then the School Board's ability to prove its allegations would be facilitated given the substantially more onerous burden of proof in criminal proceedings. Alternatively, if the administrative case were to be tried before the criminal proceeding and Ms. McPherson were absolved of the School Board's charges, then a subsequent criminal conviction would likely result in another attempt by the School Board to terminate Ms. McPherson's employment.

In the Tersigni case, the ALJ rejected Ms. Tersigni's request for a blanket protective order by noting Florida courts have consistently held that a party invoking his or her Fifth Amendment privilege must do so in response to specific questions. Accordingly, the ALJ ruled that "[o]nce the Fifth Amendment has been invoked on a question-by-question basis in this proceeding, this court will be in a position to determine whether it is reasonably possible that [Ms. Tersigni]'s answers to discovery questions could evoke a response forming a link in a chain of evidence necessary for a criminal conviction."

HealthQwest Frontiers, Inc. v. Dep't of Children & Families, Colonial Management Group, and Riverwood Group, LLC., DOAH Case No. 13-4969 (Order Closing File April 23, 2014).

FACTS: On November 2, 2012, the Department of Children and Families ("DCF") published a Needs Assessment Report indicating additional opiod treatment programs were needed in Pinellas County. After considering the applications submitted in response, DCF selected HealthQwest and the CRC Healthgroup to establish full clinics. In July 2013, the Riverwood Group, LLC ("Riverwood") petitioned for a formal administrative hearing to challenge that decision, and DCF referred the matter to DOAH where it was assigned case no. 13-3867BID. However, during the pendency of case no. 13-3867BID, DCF rescinded its selections and elected to repeat the entire selection process. The results of this second selection process were that DCF denied HealthQwest's application and approved those of the Colonial Management Group ("Colonial")

continued...

DOAH CASE NOTES
from page 11

and Riverwood. HealthQwest petitioned for a formal administrative hearing that was assigned case no. 13-4969, and Colonial and Riverwood were allowed to intervene. For reasons that are not apparent, case no. 13-3867BID was initiated and treated as a bid protest, but case no. 13-4969 was not.

OUTCOME: The ALJ in case no. 13-4969 ruled that DCF's rescission of its prior approvals and consideration of previous and new applications were void ab initio. Case no. 13-3867BID was pending at DOAH when DCF elected to repeat the selection process, but section 120.569(2)(a), Florida Statutes, mandates that "the referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1). . . ." Thus, the ALJ held that "[t]here is no legitimate cause of action pending before DOAH as to the re-evaluation of HealthQwest's application, nor whether HealthQwest or the Intervenors' applications should be approved." Accordingly, the ALJ closed case no. 13-4969 and relinquished jurisdiction to DCF.

Pinnacle Rio, LLC v. Fla. Housing Fin. Corp. & Allapattah Trace Apartments, Ltd., DOAH Case No's 14-1398BID, 14-1399BID, 14-1400BID, 14-1425BID, 14-1426BID, 14-1427BID, 14-1428BID (Non-Final Order April 16, 2014).

FACTS: The Florida Housing Finance Corporation ("the FHFC") solicited applications on September 19, 2013, to compete for awards of low-income tax credits for affordable housing developments to be constructed in Miami-Dade, Broward, and Palm Beach counties. After the FHFC chose other applicants for awards, 2401 NW, LLC ("2401") requested a formal administrative hearing to challenge FHFC's decision and petitioned to have rules 67-60.006(1) and 67-60.009, Florida Administrative Code invalidated. With regard to the rule challenge, 2401 alleged that the aforementioned rules provide the only authority for the FHFC to conduct a proceeding for the award of housing credits under the procedures set forth in section 120.57(3), Florida Statutes. 2401 further alleged that section 120.57(3), Florida Statutes, provides a different and more deferential standard of proof than the procedures otherwise applicable under chapter 120, Florida Statutes. Accordingly, 2401 requested that its bid protest be abated until issuance of a final order in its rule challenge.

OUTCOME: The ALJ denied 2401's Motion to Abate because the FHFC had the authority to award the tax credits pursuant to section 120.57(3), Florida Statutes, even if the rules at issue were invalid or had never been adopted. Because section 420.507(48), Florida Statutes, authorizes the FHFC to award the tax credits via a form of competitive solicitation, any challenge to that award must be conducted pursuant to section 120.57(3), Florida Statutes.

Bid Protests

Care Access PSN, LLC v. AHCA and Prestige Health Choice, LLC, DOAH Case No. 13-4113BID, AHCA Case No. 14-0085-FOF-BID (Final Order Jan. 31, 2014).

FACTS: In December 2012, the Agency for Health Care Administration ("AHCA") issued an Invitation to Negotiate seeking proposals for the provision of managed medical assistance services to Medicaid recipients in Miami-Dade and Monroe counties. The ITN stated that AHCA would contract with five to ten providers, with at least one contract being awarded to a provider service network ("PSN"). The ITN required that a PSN be majority-owned by a provider or a group of affiliated providers. Several months later, AHCA noticed its intent to award contracts to ten providers, including Prestige Health Choices, LLC ("Prestige"), which was selected as the only PSN. Care Access PSN, LLC ("Care Access") challenged the award by asserting Prestige is not majority-owned by a group of affiliated health choice providers. Health Choice Network ("HCNF") owns 13.333% of Prestige, and Care Access asserted HCNF is not a health care provider. If HCNF's interest were to be subtracted from the sum of Prestige's provider ownership, then Prestige would not be majority-owned by a group of health care providers.

OUTCOME: As summarized in the March 2014 issue of DOAH Case Notes, the ALJ concluded, after examining the descriptions of a PSN in the ITN and sections 409.912(4) and 409.962(13), Florida Statutes, that a "provider" must be an entity that delivers medical services directly to Medicaid recipients. HCNF is a fiscal intermediary services organization and a health center controlled network that provides no health care services. Instead, HCNF provides financial, information technology, billing, and centralized referral services to its members, each of whom is a health care provider. Accordingly, the ALJ recommended that AHCA enter a final order rescinding the proposed award to Prestige because Prestige (being minority owned by a group of affiliated health care providers) is not a PSN for the purpose of this procurement.

In its Final Order, AHCA rejected the ALJ's recommendation and upheld the contract award to Prestige. In support thereof, AHCA determined it had substantive jurisdiction over the interpretation of the ITN and chapter 409, Florida Statutes, and that AHCA's interpretations were as or more reasonable than those of the ALJ.

Agency Snapshots

Department of Highway Safety and Motor Vehicles

by Susan Stafford

The Florida Department of Highway Safety and Motor Vehicles was created by section 20.24, Florida Statutes, and provides services in partnership with county tax collectors; works with local, state, and federal law enforcement agencies to promote a safe driving environment; issues driver licenses and identification cards; and provides services related to consumer protection and public safety.

The Department is composed of four divisions: the Florida Highway Patrol, Motorist Services, Administrative Services, and Information Systems Administration.

Agency Head:
Terry L. Rhodes, Executive Director
Neil Kirkman Building
2900 Apalachee Parkway
Tallahassee, FL 32399-0500

Agency Clerk: Each Division designates an employee to receive filings. The following have been designated as agency clerks:

Final Orders rendered pursuant to Chapters 318 and 322, Florida Statutes
Maureen Johnson
Chief
Bureau of Records
Division of Motorist Services
Neil Kirkman Building
2900 Apalachee Parkway
Mail Stop #89
Room A-234
Tallahassee, FL 32399
Telephone: (850) 617-2702

Final Orders rendered pursuant to Chapter 324, Florida Statutes
Julie Gentry
Chief
Bureau of Motorist Compliance
Division of Motorist Services
Neil Kirkman Building
2900 Apalachee Parkway
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Final Orders rendered pursuant to Chapter 320, Florida Statutes
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Bureau of Motor Vehicle Field Operations
Division of Motorist Services
Neil Kirkman Building
2900 Apalachee Parkway
Mail Stop #64
Room B-372
Tallahassee, FL 32399
Telephone: (850) 617-3171

Final Orders rendered pursuant to Chapter 321, Florida Statutes
Kenneth Spears
Law Enforcement Captain
Florida Highway Patrol
Neil Kirkman Building
2900 Apalachee Parkway
Mail Stop #47
Room A-315
Tallahassee, FL 32399
Telephone: (850) 617-2939

Final Orders rendered by the Department
For the purpose of receiving and recording all Final Orders rendered by the Governor and Cabinet sitting as the head of the Department of Highway Safety and Motor Vehicles:
Carol Bishop
Senior Executive Assistant to the Executive Director
Neil Kirkman Building
2900 Apalachee Parkway
Room B-443
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Telephone: (850) 617-3100

Hours for filings: 8:00 a.m. to 5:00 p.m.; filings received after 5:00 p.m. are considered filed on the next business day.

General Counsel:
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Telephone: (850) 617-3101

Mr. Hurm is a sworn law enforcement officer who previously served as Legal Advisor to the Okaloosa County Sheriff's Office and the Florida Department of Law Enforcement. At FDLE he developed digital investigative files for major homicide cases, and he was instrumental in creating a digital accreditation file system for the Sheriff's office.

Number of Lawyers on Staff: 14

Kinds of Cases: The Office of General Counsel represents the Department in all administrative proceedings and in judicial proceedings in both federal and state courts. Cases include administrative reviews and judicial appeals of driver license suspensions and revocations; licensing of DUI programs; licensing of commercial driving schools and certification of commercial motor vehicle instructors; licensing of motorcycle rider training programs and certification of instructors; registration of commercial and private motor vehicles; licensing of motor vehicle dealers; and contraband forfeitures.

Agency Snapshots continued...

AGENCY SNAPSHOTS
from page 13

Agency for Health Care Administration

by Vilma Martinez

The Legislature created the Agency for Health Care Administration (AHCA) in section 20.42, Florida Statutes. AHCA is specifically authorized in section 20.42, Florida Statutes, to act as the chief health policy and planning entity for the state. It is the agency primarily responsible for the state's estimated $22.9 billion Medicaid program, the licensure of the state's 45,000 health care facilities, and the sharing of health care data through its operation of the Florida Center for Health Information and Policy Analysis. AHCA's major responsibilities also include: health care facility inspections and regulatory enforcement; investigation of consumer complaints related to health care facilities and managed care plans; implementation of the Certificate of Need program; administration of the contracts with the Florida Healthy Kids Corporation; certification of health maintenance organizations and prepaid health clinics; and other duties prescribed by statute or agreement.

Like many of its sister agencies, AHCA is headed by a secretary, who is appointed by the Governor, subject to confirmation by the Senate. AHCA is divided into various units and subunits:

• **The Chief of Staff's Office** coordinates Medicaid and health care regulation policy with other state agencies, the Legislature and the federal government. This office oversees Communications and Legislative Affairs, the Division of Information Technology, and serves as the liaison to the Governor's Washington Office.

• **The Division of Operations** is headed up by the Deputy Secretary of Operations and is the Agency's business support unit. It assists the Agency with financial, personnel, and support related functions through the Bureau of Financial Services, Bureau of Human Resources, Bureau of Social Services, and Medicaid Third Party Liability Unit.

• **The Division of Health Quality Assurance (HQA)** is authorized to regulate 40 types of health care facilities and providers, managed care organizations, and more than 46,000 facilities or providers including health maintenance organizations, nursing homes, hospitals, assisted living facilities, home health agencies, health care clinics, and clinical laboratories. The Division is comprised of six bureaus: Bureau of Health Facility Regulation, Bureau of Managed Care, Bureau of Field Operations, Bureau of Central Services, the Office of Plans and Construction, and the Florida Center for Health Information and Policy Analysis.

• **The Division of Medicaid** directs all Medicaid program planning and development activities. The Division plans, develops, organizes, and monitors program planning, coverage and reimbursement policies and oversees provider and consumer relations. Additionally, the Division administers the Medicaid fiscal agent contract and formulates long-term plans for service delivery. The Division is subdivided into several units, which are managed by three Assistant Deputy Secretaries.

- The Assistant Deputy Secretary for Medicaid Finance oversees the Division and acts as the Medicaid Chief Financial Officer and is responsible for the bureaus of Medicaid Program Analysis, Medicaid Program Finance, and Medicaid Contract Management. These bureaus aid the Assistant Deputy Secretary in carrying out the functions of the Division.

- The Assistant Deputy Secretary of Medicaid Operations is responsible for the bureaus of Medicaid Services and Pharmacy Services, and the Performance, Evaluation and Research Unit.

- The Assistant Deputy Secretary for Medicaid Health Systems heads the Bureaus of Health Systems Development, the 11 Medicaid field offices, and the Choice Counseling Unit.

• **The Office of the Inspector General** works to provide a central point for coordination of activities that promote accountability, integrity, and efficiency in government and ensures that AHCA's programs and services comply with all applicable laws, policies, and procedures in accordance with the Florida Statutes. In addition to these duties, the Inspector General is responsible for the oversight of the Office of Medicaid Integrity (MIP), which is authorized by section 409.913, Florida Statutes. MIP audits and investigates Medicaid providers suspected of overbilling or defrauding Florida's Medicaid program, recovers overpayments, issues administrative sanctions and refers cases of suspected fraud for criminal investigation. The Inspector General's Office contains an investigations section, an internal audit unit, the Office of Medicaid Program Integrity, and the HIPAA Privacy and Security Compliance Office.

• **The Office of the General Counsel (OGC)** is managed by the General Counsel, who is AHCA's chief legal officer and a member of the AHCA Management Team. He advises the Secretary and the AHCA Management Team on all legal issues relating to AHCA. The General Counsel supervises the Deputy General Counsel and all OGC section leaders, except the Agency Clerk who is supervised by the Deputy General Counsel. The OGC has seven sections: the Agency Clerk's Office (ACO), the Appellate Section, the Facilities Section, the

Litigation Section, the Medicaid Section, the Medicaid Managed Care Section, and the Rules Coordinator.

The OGC provides legal advice and representation for AHCA on all legal matters, including: licensure and regulation of health care facilities; regulation of managed care plans; administration of the Medicaid state plan; recovery of Medicaid overpayments due to abuse or third party liability; and, civil litigation related to various AHCA programs.

General Counsel:
Stuart F. Williams
2727 Mahan Drive, Mail Stop #3
Tallahassee, FL 32308
Phone: (850) 412-3630

Filing Documents:

Petitions for hearing and other pleadings filed pursuant to the administrative process of chapter 120, Florida Statutes, may be filed with AHCA by U.S. mail or courier sent to the Agency Clerk at the address listed below, by hand delivery or by facsimile transmission to (850) 921-0158. Electronic filing is also available at: http://apps.ahca.myflorida.com/Efile. All pleadings filed with AHCA must meet the requirements of rule 28-106.104, Florida Administrative Code, as well as the requirements of rules 28-106.201 or 28-106.2015, Florida Administrative Code (whichever is applicable), in the case of petitions for hearing. The filing date for documents filed by facsimile transmission is the date the Agency Clerk receives the complete document. Documents filed by facsimile transmission after 5:00 p.m. are deemed to have been filed as of 8:00 a.m. on the next regular business day.

Agency Clerk:
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Hours of Operation:

AHCA's hours of operation during which filings will be accepted are Monday through Friday, 8:00 a.m. to 5:00 p.m.

Obtaining Public Records:
Public Records Office
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308-5403
Phone: (850) 412-3688
Fax: (850) 921-0158
PublicRecordsReq@ahca.myflorida.com

Index of Final Orders:

AHCA currently uses the website of the Division of Administrative Hearings as its official reporter for all final orders required to be indexed by section 120.53, Florida Statutes, which have been rendered since September 1, 2013. The Division of Administrative Hearings' website can be found at http://www.doah.state.fl.us/.

Florida Administrative Law Reports served as the official reporter for final orders rendered before September 1, 2013, and required to be indexed by section 120.53, Florida Statutes.

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http://www.ahca.myflorida.com/

Law School Liaison

A Brief Review of the 2013-14 Academic Year at the Florida State College of Law

by David Markell, Associate Dean for Environmental Programs and Steven M. Goldstein, Professor

The College of Law's Environmental Program had a very successful 2013-2014 academic year. We are delighted that *U.S. News & World Report* ranked our Environmental Program in the nation's top 20 again. We summarize below our activities during the past year and the accomplishments of our alumni.

Fall 2013 Events

Distinguished Environmental Law Lecture: The Obama Administration, Climate Change and the Clean Air Act: Ann Carlson, the Shirley Shapiro Professor of Environmental Law and Faculty Co-Director, Emmett Center on Climate Change and the Environment, UCLA School of Law, discussed the role of the Clean Air Act in addressing climate change challenges.

Environmental Forum: Adaptation Challenges and A Review of Ongoing Initiatives: The College of Law's Fall 2013 *Environmental Forum* focused on adaptation challenges. Featured panelists included: Heidi Stiller, Human Dimensions Specialist, National Oceanic and Atmospheric Administration; Julie A. Dennis, Community Program Manager, Florida Department of Economic Opportunity; Janet Bowman, Director, Legislative Policy & Strategies, Florida Chapter of The Nature Conservancy; and Will Butler, Assistant Professor of Environmental Planning, Florida State University Department of Urban and Regional Planning. David Markell, Steven M. Goldstein Professor, moderated the *Forum*.

Environmental Enrichment Series: The Fall 2013 Environmental Enrichment Series for our Environmental Certificate and Environmental LL.M. students included leading academics, policy makers and attorneys. Guest speakers included: Angela Morrison, Hopping Green & Sams; Meredith Jagger, Environmental Epidemiologist, Florida Department of Health and Manager of the Department's Building Resilience Against Climate Effects (BRACE) Program; Professor Amy Stein, Tulane University Law School; Noah D. Valenstein, Executive Office of the Governor of Florida; and Anne Longman, Lewis, Longman & Walker.

Environmental Externship Luncheon: The College of Law's Clinical Externship Program and Environmental Faculty hosted a luncheon with several lawyers working in several government agencies and non-profit groups in order to enable students to learn about externship opportunities for the spring and summer semesters.

Spring 2014 Events

Conference: Environmental Law Without Congress: In February, the College of Law hosted a leading-edge day-long conference on the future of environmental law in the absence of new federal legislation. The conference featured leading environmental law scholars from throughout the United States. The featured keynote speaker was Richard Lazarus, the Howard and Katherine Aibel Professor of Law at Harvard Law School, and other speakers included: University of California Berkeley Sho Sato Professor of Law Daniel A. Farber; J.B. Ruhl, the David Daniels Allen Distinguished Professor at Vanderbilt Law School; Pennsylvania State University Professor of Psychology Janet Swim, the lead author of the American Psychological Association's report on the psychology of climate change; and Dallas Burtraw, the Darius Gaskins Senior Fellow at Resources for the Future. Larson Professor Shi-Ling Hsu organized the conference and served as moderator.

Environmental Forum: Apalachicola-Chattahoochee-Flint River System: Legal, Scientific, and Policy Issues: The College of Law's Spring 2014 *Environmental Forum* on the Apalachicola-Chattahoochee-Flint River System explored the legal, scientific, and policy issues associated with the State of Florida's recent filed, and ongoing, effort to have the United States Supreme Court equitably apportion the waters of the System. Participants in the *Forum* included Jonathan A. Glogau, Florida Office of the Solicitor General, Ted Hoehn, Florida Fish and Wildlife Conservation Commission, and Matthew Z. Leopold, General Counsel, Florida Department of Environmental Protection. Sarah Spacht introduced the program and Professor Markell served as moderator.

Environmental Conference: The Evolving Law of Hydraulic Fracturing and Unconventional Oil and Gas: A third significant event in the spring was a special College of Law program on hydraulic fracturing. The Conference featured Timothy Riley and Richard Brightman of Hopping Green & Sams, Dale Calhoun of G. David Rogers and Associates, Floyd R. Self of Gonzalez Saggio & Harlan, and Professor Hannah Wiseman. Speakers explored recent changes in environmental laws that address oil and gas development, the Federal Energy Regulatory Commission's process for approving interstate natural gas pipelines like the Sabal Trail pipeline planned for Florida, Florida oil and gas law, natural gas acquisition, and legal and policy

issues associated with liquefied natural gas vehicles and fueling stations.

Environmental Enrichment Series and faculty workshops: The College of Law welcomed three distinguished faculty members to campus during the spring semester: Bob Ellickson, Walter E. Meyer Professor of Property and Urban Law, Yale Law School; John Nagle, John N. Matthews Professor, University of Notre Dame Law School; and Oren Perez, Professor of Law, Bar-Ilan University.

Environmental Colloquium: The *Colloquium* honored our Environmental LL.M. students and several outstanding J.D. students and provided them with the opportunity to present their papers on environmental topics.

HOUSE BILL 7073
from page 1

IT-related competitive solicitations. AST will review all state agency technology purchases of $250,000 or more unless the purchase is specifically mandated by the Legislature.

To promote efficiency and ensure compatibility with state agencies' needs, AST will establish and publish statewide IT architecture standards. In consultation with state agencies, AST will develop a methodology for collecting IT expenditure data at the agency level. AST will develop standards for state agency IT reports and updates, and will assist agencies with IT-related legislative budget requests. The Department of Legal Affairs, Department of Financial Services, and Department of Agriculture and Consumer Services (cabinet agencies) must adopt the IT architecture, project management, and reporting standards developed by AST or adopt alternative standards based on best practices and industry standards.

Beginning January 1, 2015, AST must perform project oversight on all agency IT projects of $10 million or more, and on any cabinet agency IT project that has a total project cost of $25 million or more and that impacts another agency. By June 30, 2015, AST must establish project management and oversight standards for agencies implementing IT projects. AST will provide training to agencies on the adoption of these standards. By April 1, 2016, and biennially thereafter, AST must make recommendations regarding opportunities for standardization and consolidation of IT services that support common business functions. Beginning July 1, 2016, and annually thereafter, AST will conduct assessments to determine agencies' compliance with published IT standards and guidelines. Such assessments will be reported to the Governor, the President of the Senate, and the Speaker of the House of Representatives, beginning December 1, 2016.

Information Technology Security

AST's IT security responsibilities are set forth in the newly amended section 282.318, Florida Statutes, the Information Technology Security Act. The act provides that AST is responsible for establishing standards and practices consistent with generally accepted best practices of IT security and for adopting rules to protect agencies' data and IT resources. AST must develop a statewide IT security strategic plan, as well as an IT security framework for use by state agencies. Further, AST must establish appropriate safeguards for protecting state government data and IT resources, and must assist agencies in complying with the act's provisions.

In collaboration with the Cybercrime Office of the Department of Law Enforcement, AST will provide IT security training to state agency information security managers. In addition, pursuant to section 282.0051(11)(d), Florida Statutes, AST will collaborate with the Department of Law Enforcement to establish a process for detecting, reporting, and responding to IT security incidents, breaches, and threats.

Public Records

House Bill 7073 directs AST to conduct a feasibility study that provides recommendations regarding the management of state government data. AST must report on the findings of the feasibility study by June 1, 2015. Of particular significance is a requirement that AST create a project plan for providing access to public information through a single website.

State Data Center

In addition to its duties related to policy development and project management, AST will oversee the state data center. House Bill 7073 authorizes a type two transfer of two data centers, the Northwood and Southwood Shared Resource Centers, from DMS to AST. AST is charged with implementing industry standards and best practices related to the state data center's operation and management; implementing cost-recovery mechanisms and operating guidelines and procedures related to the center's financial management; adopting rules to govern the state data center's operation; and beginning in 2016, conducting a market analysis to determine whether the state's data center is the most effective and efficient way that customers can acquire services. AST must complete an operational assessment of the state data center that focuses on standardizing the state data center's operational practices and identifying duplication of staff resources supporting its operation. Additionally, AST must recommend additional consolidation of agency computing facilities or data centers into the state data center.

The state data center must enter into service-level agreements that define the services and applications to be offered to its customer entities. The service-level agreements must provide for mediation of disputes by the Division of Administrative

continued...

HOUSE BILL 7073
from page 17

Hearings pursuant to section 120.573, Florida Statutes. The state data center serves as the custodian of resources and equipment that it manages and supports, and assumes administrative access rights to consolidated resources and equipment. Data backup and disaster recovery duties of the state data center are set forth in section 282.201(2), Florida Statutes.

Organizational Structure

Section 20.61, Florida Statutes, sets forth the organizational structure of AST, providing that it is not subject to control, supervision, or direction by DMS. AST is led by an executive director who is designated as the state's chief information officer. Appointed by the Governor and confirmed by the Senate, the executive director consults with and is advised by the Technology Advisory Council on enterprise IT matters. The law establishes job requirements for AST's executive director, who must be a proven, effective administrator, preferably one with executive-level IT experience in both the public and private sectors. Such experience includes the development and implementation of IT strategic planning; management of enterprise IT projects, particularly management of large-scale consolidation projects; and development and implementation of fiscal and substantive IT policy. Section 20.61(2), Florida Statutes, establishes eleven positions within AST, all of which are appointed by the executive director: deputy executive director/deputy chief information officer; chief planning officer; six strategic planning coordinators; chief operations officer; chief information security officer; and chief technology officer. House Bill 7073 authorizes 25 full-time equivalent positions within AST for the 2014-2015 fiscal year.

The Technology Advisory Council is created by section 20.61(3), Florida Statutes. It consists of seven members. The Governor appoints four members, two of whom must be from the private sector. The President of the Senate and the Speaker of the House of Representatives each appoint one member. Finally, the Attorney General, the Commissioner of Agriculture and Consumer Services, and the Chief Financial Officer jointly appoint one member by majority agreement. All appointments are for four-year terms, except that two of the Governor's initial appointments to the council are for two-year terms.

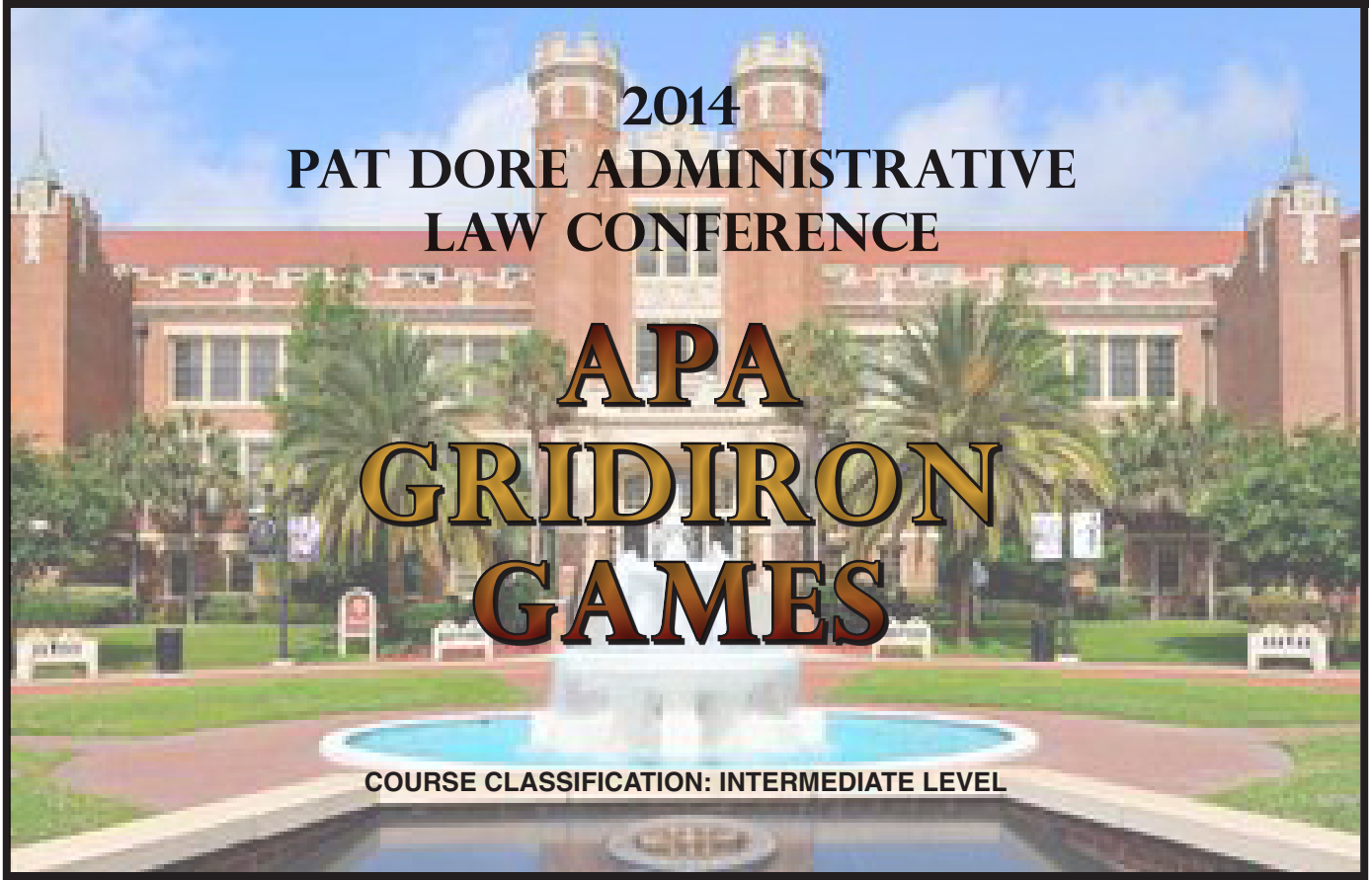
The Technology Advisory Council makes recommendations to AST's executive director on enterprise IT policies, standards, services, architecture, and statewide IT strategic planning. The Technology Advisory Council may also identify and recommend opportunities for the establishment of public-private partnerships when considering technology infrastructure and services in order to accelerate project delivery and provide a source of new or increased project funding.

House Bill 7073 authorizes a type two transfer of all records, property, pending issues, existing contracts, administrative authority, administrative rules in chapters 71A-1 and 71A-2, Florida Administrative Code, trust funds, unexpended balances of appropriations, allocations, and other funds of AEIT to AST. Chapter 71A-1, Florida Administrative Code, is the more recently adopted of the two chapters. Known as the "Florida Information Technology Resource Security Policies and Standards," Chapter 71A-1 documents a framework of information security best practices for agencies and defines minimum standards and controls to be used by agencies in securing IT resources.

Brent McNeal *is the Privacy Officer at Citizens Property Insurance Corporation. His practice focuses on privacy law, ethics and compliance, policy development, and open government. He previously served as Assistant General Counsel at the Department of Education, where his duties included administrative litigation and agency rulemaking under the Florida Administrative Procedure Act.*

• Live
• Audio CD
• Video DVD

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



2014 PAT DORE ADMINISTRATIVE LAW CONFERENCE

APA GRIDIRON GAMES

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

October 2-3, 2014

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Course No. 1788R

continued...

PAT DORE CONFERENCE
from page 19

SCHEDULE OF EVENTS

This Program Provides an Overview of Administrative Procedures, Including Case Law Update, Pointers on Practice Before DOAH, Ethical Issues, the Rulemaking Process, Challenges to Agency Statements, Attorney Fees in Administrative Proceedings, Procurement Proceedings, and Public Records Requests. The Program also will feature an Agency General Counsels Roundtable and an Appellate Judges Panel.

THURSDAY, OCTOBER 2

8:30 a.m. – 8:40 a.m.
Welcome and Announcements

8:40 a.m. – 9:30 a.m.
"Instant Replay": APA Caselaw Update
Francine M. Ffolkes (Department of Environmental Protection)

9:30 a.m. – 10:20 a.m.
"Flag On The Play!" Do's and Don'ts of DOAH Practice – Administrative Law Judge Panel
Chief Judge Robert S. Cohen, ALJ Linzie F. Bogan, ALJ Bruce B. McKibben, ALJ Jessica E. Varn (Division of Administrative Hearings)

10:20 a.m. – 10:35 a.m. **Break**

10:35 a.m. – 11:25 a.m.
"The Rule Book": Hot Topics In Rulemaking
Patricia A. Nelson (Office of Fiscal Accountability and Regulatory Reform); Kenneth J. Plante (Joint Administrative Procedures Committee)

11:25 a.m. – 11:50 a.m.
"The Ruling on the Field..." Declaratory Statements/Variances and Waivers
Frederick R. Dudley (Dudley, Sellers & Healy, P.L.)

12:00 noon – 1:30 p.m.
Lunch
Keynote Speech – Judge T. Kent Wetherell, II (First District Court of Appeal)

1:30 p.m. – 2:20 p.m.
"Rules? What Rules?" Demystifying Sections 120.56(4) and 120.57(1)(e)
ALJ John G. VanLaningham (Division of Administrative Hearings)

2:20 p.m. – 2:50 p.m.
"Look At The Scoreboard!" Attorney Fees In Administrative Proceedings
Lawrence E. Sellers, Jr. (Holland & Knight, LLP)

2:50 p.m. – 3:05 p.m. **Break**

3:05 p.m. – 3:55 p.m.
"Opening the Playbook": Public Records Requests
Allen R. Grossman (Grossman, Furlow, & Bayo, LLC), Moderator; Michael J. Glazer (Ausley McMullen); Brian Hermeling (Office of Financial Regulation); Kaitlyn McCown (Florida Fish & Wildlife Conservation Commission); Richard Shoop (Agency for Health Care Administration)

3:55 p.m. – 4:45 p.m.
"Challenging the Call": Administrative Appeals
Judge Robert T. Benton; Judge Stephanie W. Ray; Judge T. Kent Wetherell, II (First District Court of Appeal); Garnett W. Chisenhall, Moderator (Department of Business and Professional Regulation)

5:00 p.m. – 6:30 p.m.
Reception

Schedule of Events, continued...

PAT DORE CONFERENCE
from page 20

Schedule of Events *(from previous page)*

FRIDAY, OCTOBER 3

8:30 a.m. – 9:20 a.m.
"Heads or Tails?" Competitive Procurement and Bid Protests
Timothy P. Atkinson, Segundo J. Fernandez (Oertel, Fernandez, Bryant & Atkinson, P.A.)

9:20 a.m. – 10:10 a.m.
"Head Coaches Meeting": General Counsels Panel
Colin Rooparine, Moderator (Office of Financial Regulation); Patricia A. Conners (Department of Legal Affairs); Maureen M. Hazen (Florida State Board of Administration); Matthew Z. Leopold (Department of Environmental Protection)
J. Layne Smith (Department of Business and Professional Regulation); Harold G. Vielhauer (Florida Fish & Wildlife Conservation Commission)

10:10 a.m. – 10:25 a.m. **Break**

10:25 a.m. – 11:15 a.m.
"Unsportsmanlike Conduct?" Ethics and Professionalism
C. Christopher Anderson, III (Commission on Ethics)

11:15 a.m. – 11:45 a.m.
"Who Knows the Rules of the Game?" APA Jeopardy
Administrative Law Judges – ALJ Li Nelson; ALJ Elizabeth W. McArthur; ALJ John G. VanLaningham (Division of Administrative Hearings)
Agency Attorneys – Alyssa L. Cameron (Department of Agriculture & Consumer Services); Mary Ellen Clark (Office of the Attorney General); Timothy E. Dennis (Office of the Attorney General)
Private Practice Attorneys – Donna E. Blanton (Radey Thomas Yon & Clark, P.A.) M. Christopher Bryant (Oertel, Fernandez, Bryant & Atkinson, P.A.); William E. Williams (GrayRobinson, P.A.)

CLE CREDIT

CLER PROGRAM

(Max. Credit: 11.0 hours)

General: 11.0 hours • Ethics: 0.5 hours

CERTIFICATION PROGRAM

(Max. Credit: 11.0 hours)

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Seminar credit may be applied to satisfy CLER / Certification requirements in the amounts specified above, not to exceed the maximum credit. See the CLE link at www.floridabar.org for more information.

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A $25 service fee applies to all requests for refunds. Requests must be in writing and postmarked no later than two business days following the live course presentation or receipt of product. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. Registrants who do not notify The Florida Bar by 5:00 p.m., September 19, 2014 that they will be unable to attend the seminar, will have an additional $55 retained. Persons attending under the policy of fee waivers will be required to pay $55.

continued...

PAT DORE CONFERENCE
from page 21

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REGISTRATION FEE (CHECK ONE):

- ❑ Member of the Administrative Law Section: $170
- ❑ Member of the Administrative Law Section - Government Agency: $120
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- ❑ Full-time law college faculty or full-time law student: $125
- ❑ Persons attending under the policy of fee waivers: $55

Members of The Florida Bar who are Supreme Court, Federal, DCA, circuit judges, county judges, magistrates, judges of compensation claims, full-time administrative law judges, and court appointed hearing officers, or full-time legal aid attorneys for programs directly related to their client practice are eligible upon written request and personal use only, complimentary admission to any live CLE Committee sponsored course. Not applicable to webcast. (We reserve the right to verify employment.)

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continued...

PAT DORE CONFERENCE
from page 22

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