

**ADMINISTRATIVE LAW SECTION EXECUTIVE COUNCIL MEETING
THURSDAY, JUNE 18, 2020 – 12:30 P.M. TO 3:00 P.M.
VIRTUAL MEETING HELD VIA ZOOM**

Present at the meeting were the following: Brian Newman, Chair; Judge Gar Chisenhall, Jr., Immediate Past Chair; Bruce Lamb, Chair-Elect; Stephen Emmanuel, Secretary; Tabitha Jackson, Treasurer; Judge Suzanne Van Wyk; Judge Anthony Miller; Judge Cathy Sellers; Cindy Miller; Colin Roopnarine; Gigi Rollini; Gregg Morton; Jowanna Oates; Judge Francine Ffolkes; Judge June McKinney; Larry Sellers; Lyyli Van Whittle; Patricia Nelson; Paul Drake; Richard Shoop; Judge Robert Kilbride; Louise St. Laurent.

I. Call to Order. – Brian Newman, Chair.

Brian expressed his appreciation to Calbrail for arranging for the meeting to be held via Zoom.

II. Preliminary Matters.

The two candidates running for President-Elect of The Florida Bar, Gary Lester and Steve Davis, made brief comments on their candidacies at the beginning of the meeting. Gary Lester spoke first and briefly discussed his qualifications. He then talked about how the COVID 19 crisis has made things very uncertain, so the work of the Rules Committee and the Sections is more important than ever because The Florida Bar has to be nimble and make changes so lawyers can continue to practice law and provide representation to their clients. Steve Davis then gave a brief description of his qualifications. He likewise discussed the COVID 19 crisis and what the Bar is doing to deal with its impact on members. He also mentioned that he believes the legislative session this year will be a difficult one.

The Chair next recognized Judge Anthony Miller, and congratulated him on his recent appointment as a circuit judge for the Second Judicial Circuit. Judge Miller said he is completing his last term on the Executive Council, and is very grateful for the interaction he has had with its members, especially Jowanna Oates, who recruited him to serve on the Council. He thanked the many members of the Section who had helped him through the years, and he looks forward to continuing to be a member of the Section.

- A. Consideration of Minutes. The minutes of the November 12, 2019 Executive Council meeting were considered. Two minor spelling errors were noted and corrected. The minutes were then moved for approval by Judge Van Wyk, seconded by Gigi Rollini, and unanimously approved.
- B. Treasurer's Report. Tabitha Jackson gave the Treasurer's report. She stated that the Section is on budget. Calbrail noted that COVID 19 had required the cancellation of some events, which resulted in fewer expenditures.
- C. Chair's Report. In his Chair's Report, Brian Newman discussed the following past and upcoming events.

CLEs

Brian expressed his disappointment that a lot of the Section's plans were disrupted by the pandemic. The Section had good momentum going into the Fall, and a lot of people were working on a lot of Section events and CLE programs that, unfortunately, had to be postponed or cancelled. He recognized Bruce Lamb, who again chaired the CLE Committee and helped lead a lot of these efforts. He also expressed disappointment that we had to cancel the Pat Dore Conference again. Unfortunately, the COVID-19 pandemic also required the cancellation of the Advanced Topics CLE. He has spoken to Chair-Elect Bruce Lamb and past Chair Gar Chisenhall about CLE programs for the upcoming year, and ways to provide CLE courses via Zoom or other platforms because of social distancing measures.

Brian thanked everyone who participated in planning the CLE events that were cancelled. In particular, he thanked Judge Suzanne Van Wyk for taking the lead on the Pat Dore Conference, and also Judge Chisenhall, Judge Nelson and Mark Ito. He thanked Bruce Lamb for chairing the Section's CLE Committee this term and Judge Van Wyk, Judge Nelson, Judge Miller, and Angela Morrison for their hard work in preparing CLE programs for the Section.

Publications

Brian next noted that the Section has continued to excel in the area of publications. He thanked Richard Shoop for writing a thoughtful article on qualified representatives. "Parties Beware: Your Qualified Representative in an Administrative Proceeding might not be Qualified to Represent You if You Decide to Pursue an Appeal" was published in the November/December 2019 edition of *The Florida Bar Journal*. Mr. Shoop also contributed a feature article for the December 2019 edition of the *Administrative Law Section Newsletter*, a Q&A with Chief Judge John MacIver. Many others contributed feature articles to the newsletter, including Gregg Morton ("Off to a Great Start: the Administrative Law Section's Inaugural Trial Academy"); Jowanna Oates and Cathy Sellers ("The End of an Era: Judge Scott Boyd Retires"), and Brittany Adams Long, Donna Blanton, and Travis Miller ("Practical Implications of Amendment 6 in Administrative Law Disputes"). Jowanna Oates and Tiffany Roddenberry are the co-editors of the newsletter and continue to do an outstanding job producing this first-rate publication. Brian also recognized other regular contributors to the Newsletter: Tara Price, Larry Sellers, and Gigi Rollini write the appellate case notes and Judge Gar Chisenhall, Mathew Knoll, Dustin Metz, Virginia Ponder, Christina Shideler, Paul Rendleman, and Tiffany Roddenberry prepare the DOAH case notes. Last, he thanked Lyli Van Whittle for her work with the Bar Journal.

Trial Academy

The Section held its first trial school, the DOAH Trial Academy, in Fall 2019. The week-long academy was held at DOAH and was modeled on other immersive trial preparation training courses with a focus on skills that attorneys need for practicing in an administrative forum. The first class was limited to 20 students to ensure enough time for instructors to spend with each participant individually. The students participated in workshops to practice litigation skills. The program culminated on its final day with a mock trial in front of ALJ Bob Cohen. The coaches also selected the following students for awards based on the skills taught during the academy: Virginia Edwards (best opening statement); Amanda McKibben (best direct examination); Johnny El Hachem (best cross examination); and Kristen Bond (best PRO). He thanked the ALJs and coaches who made the program a success: Judge Suzanne Van Wyk, Judge Bob Cohen, Judge Gar Chisenhall, Judge Bruce Culpepper, Judge Yolanda Green, Judge Li Nelson, Ralph DeMeo, Seann Frazier, Kathy Hood, Gregg Morton, Louise St. Laurent, and Richard Shine. Unfortunately, we will not be able to have another class this Fall because of the pandemic, but the Section will continue to sponsor the academy and have another class when we are able.

Uniform Rules of Procedure Committee

The Chair thanked the members of the ad hoc committee of the Administrative Law Section that was tasked with reviewing the Uniform Rules of Procedure and recommending appropriate changes. The committee was chaired by Larry Sellers and included Judge Yolanda Green, Judge Elizabeth McArthur, Judge Li Nelson, Judge Dave Watkins, Paul Drake, Seann Frazier, and Shaw Stiller. He thanked them all for their hard work.

The final report of the committee will be presented to the Executive Council today. Any recommended changes approved by the Executive Council will be submitted to the Administration Commission, which has the exclusive authority to propose and adopt changes to the Uniform Rules of Procedure.

Networking Events

The Chair thanked Tabitha Jackson, Matt Bryant, James Ross, Paul Drake, Ross Vickers, Virginia Ponder, Patty Nelson, Amy Schrader, and Judge Gar Chisenhall for their continued work in promoting these events. Special recognition is also warranted for Sharlee Edwards and Paula Savchenko for their efforts to kickstart the Section's South Florida Chapter.

The Section continued its efforts to grow membership through networking/charitable events, including a backpack drive and "Yappy" Hour joint event at Proof which was co-sponsored with the Animal Law Section. For those who could attend, it was one of the best networking events we have had.

Brian said it has been a pleasure being the Chair, that he has gotten more out of it than he has put into it, and he appreciates each and every one of our members.

III. Committee/Liaison Reports.

- A. Nominating Committee. The first report was from Jowanna Oates as Chair of the Nominating Committee.

Election of Officers: Jowanna began by stating that the Nominating Committee's written report is in the written materials she provided. The first order of business is the election of officers. Jowanna moved to approve the slate of Stephen Emmanuel as Chair-Elect, Tabitha Jackson as Secretary, and Suzanne Van Wyk as Treasurer. The motion was seconded by Clark Jennings and approved unanimously.

Replacement of Anthony Miller on the Executive Council for a Term Ending 2021: The Nominating Committee proposed that Greg Pitt replace Judge Miller. Jowanna noted that Greg has attended many of our events and has written articles for the newsletter. She made a motion for Greg Pitt to join the Executive Council for the term ending 2021. The motion was seconded by Lyyli Van Whittle and carried unanimously.

Executive Council Members Whose Terms Are Ending 2022: The Nominating Committee recommended Paul Drake, Judge Francine Ffolkes, Judge Robert Kilbride, Gigi Rollini, James Ross, and a new member, Matthew Bryant, who is heading up our Young Lawyers Committee. Jowanna moved to approve the entire slate. Clark Jennings seconded the motion, and it carried unanimously.

Awards:

Outstanding Service Award: The Outstanding Service Award was awarded to Judge Cathy Sellers. Judge Sellers has provided outstanding service to the Section, having served as a past Chair of the Section, and having also chaired the Pat Dore Conference for many years. Judge Sellers said she was very honored. Chair Brian stated it would be hard to pick anyone who has done more to advance the profession of administrative law than Judge Sellers.

The Curt Kiser Administrative Lawyer of the Year Award: This is the highest award given to the administrative lawyer of the year. This year's award recipient is retired Judge Scott Boyd. Jowanna said she has known Judge Boyd since 2015 when he was her boss at JAPC, and commented on his extensive writings and countless lectures about the APA. The Chair stated that Judge Boyd was the senior judge for the Southern District of DOAH when he retired, is well respected by everyone, and very deserving of the award.

The Chair thanked Jowanna for her work on the Nominating Committee.

B. Continuing Education Committee. Bruce Lamb gave the report.

1. 2020 Advanced Topics Seminar. The Advanced Topics program, which is done in conjunction with the Government Lawyers Section and the Environmental Law and Land Use Section, was rescheduled to July 10, 2020; however, it will need to be rescheduled again and they are discussing converting it to a webinar or postponing it to later this year or early next year.

Bruce reported that he has heard a lot of positive things said about using Zoom instead of In Reach, which is the normal web-based platform. The Section has not yet used Zoom for a webinar, but he believes it is a good platform that the Section should consider using.

Brittany Adams Long has agreed to replace Bruce as the CLE Chair for the Section, and she will also be their representative on the CLE Bar Committee for the coming year.

Brian thanked Bruce for his report.

There was discussion of doing CLE sessions remotely and keeping people's attention at a webinar for a full day. It was suggested that larger programs could be broken up into shorter segments.

Judge Cathy Sellers mentioned that when the pandemic got started, there was an email thread going around regarding offering a CLE on conducting Zoom hearings at DOAH, and she volunteered to arrange for faculty for it, consisting of Judge Cohen, Judge Desai, Judge Green, Craig Varn and Mike Glazer, so far. Brittany Adams Long and Judge Sellers are going to co-chair the program, and the next step is for them to get with Calbrail to move the project forward.

The Chair then thanked Richard Shoop for organizing the mentoring program for the Section, which was the first time that had been done. It was run in conjunction with the trial academy, and for those who participated, it has been successful. Richard reached out to some of the mentors and mentees to get some feedback, and he said he had received great comments in response to his email, all from the mentors. All of the comments suggested doing an icebreaker event for the next program, and he thinks that is a great idea. Richard discussed the reasons why he felt the program should continue in the future, which include helping educate young practitioners, improving the professionalism of practitioners, and providing a good example of how to practice.

C. Publications.

1. Newsletter. Jowanna Oates gave the report.

She reported that the June issue of the newsletter has been sent to the Bar. The September newsletter deadline is July 17, and the December newsletter deadline is October 16. They need feature articles and authors for agency snapshot.

Jowanna thanked the DOAH and appellate case notes teams headed up by Judge Chisenhall – they do a great job. She believes those two sections of the newsletter are really looked forward to by its readership.

2. Bar Journal. Lyyli Van Whittle reported that things are going well. She has received an interesting discovery article by Shaw Stiller that will be coming out in an upcoming issue. If anybody has any topics that they are interested in, she is always looking for articles to get published.
3. Florida Administrative Practice Manual. Judge Sellers reported that a new edition is in the works. Authors are scheduled to submit their updated chapters in mid-August. The Chair said that is a great publication as well and thanked those who contributed to it.

D. Legislative Report. Brian Newman reported that nothing passed in the last legislative session.

Jowanna reported that JAPC will be considering legislation concerning the APA, probably at its first committee meeting, and that is something the Section should monitor.

E. Board of Governors Liaison Report. Larry Sellers reported that the Board of Governors had its first ever Zoom meeting in May. He noted that more than 8,000 people had registered for the Bar Convention and so far, more than 3,200 had participated in programs virtually.

In terms of the Board, the big issue had been our efforts to protect the independence of the judiciary and secure proper funding of the judiciary in the legislative session. The Bar had an incredibly successful legislative session, fully funding the courts and protecting against any efforts to adversely impact the independence of the judiciary. The Governor had only recently received the budget due to the pandemic that hit right at the end of the legislative session, and the impact that will have in terms of possible spending cuts is unknown.

The Board has also been working with the Chief Justice and the Florida Supreme Court in facilitating the operations of the court system during this time. Like DOAH, the courts have begun holding Zoom motion hearings. The courts are

trying to get back to some semblance of normalcy and may begin having jury trials again soon.

Larry said that he was also pleased to report that they were once again successful in having the Legislature authorize state agencies to pay Bar dues and CLE expenses for state government attorneys, and he is hopeful that the Governor will not veto that appropriation.

- F. Uniform Rules Committee Report. Larry next gave a Uniform Rules Committee report, a written copy of which was included in the materials for the Section meeting. Larry said they had a great committee. The Committee solicited comments from numerous groups and received a large number of comments. Most of their meetings were spent reviewing comments on various drafts and incorporating those into what is now their final report, which is included in the materials. The report contains suggested language in legislative format, with strikethroughs and underscored changes. Each section has a comments section that summarizes the proposed changes.

The Committee is proposing a new rule regarding disqualification of a presiding officer. The practice has been to follow the civil rules, but they have modified that to correspond to the time limits in the APA. There was some tinkering with the computation of time, including a change that documents filed or served after 5:00 p.m. will be considered served effectively as of the next day.

There are also some proposed changes to the rules governing informal proceedings, a section of the Uniform Rules that had not previously received much attention. They tweaked the emergency action provisions and updated the bid protest chapter. Interestingly, one of the chapters that people have recently discovered in the Uniform Rules has to do with communications and media technology. They had finished their work before the pandemic, so they did not get any comments or suggested changes to that chapter, and it might be something that bears examining more closely in the future.

A motion to adopt proposed recommendations was made by Richard Shoop, seconded by Judge Sellers, and approved. Jowanna Oates abstained from the vote because her office will be reviewing those rules when they come forth.

Larry concluded by recognizing Judge Chisenhall, who got this project kicked off, and said he was pleased they were able to finish it this year. The Chair thanked Larry Sellers and the other members of the Uniform Rules Committee for their excellent work on this project.

- G. Public Utilities Law. Cindy Miller gave the report. She and Mike Cook organized a program that was held in Gainesville which had speakers on cyber security and the energy grid in Puerto Rico. They are hoping to work more with the

Environmental Law Committee on future programs, and also collaborate more with the Florida Public Service Commission.

H. Law School Liaison. Sharlee Edwards said that the pandemic has prohibited interaction with students in law schools for the time being.

I. South Florida Chapter.

Sharlee is hoping that the South Florida can hold some networking events via Zoom, such as happy hours. This is a difficult time, but it also gives members an opportunity to connect, especially with people in North Florida. She thinks, going forward, that will be a great thing that they can hopefully do.

J. Council of Sections.

Judge Kilbride gave the report. He began by giving an overview of what the Council of Sections does. It is a collection of representatives from each section of The Florida Bar who get together and foster communications between the sections as well as help to promote the efficiency of The Bar. He attended a Council of Sections meeting yesterday and discussed some of the speakers. John Stewart, the outgoing President, spoke. He said the registration for the Florida Bar Convention, which was being held virtually, was higher than it has been for in-person meetings in the past. That is a silver lining for the Bar Convention. He also spoke about political speech and encouraged sections that may feel compelled to say something about what is going on in our country to first check with the Florida Bar's General Counsel, which has some good guidelines. There appears to be a lot more flexibility for sections than there is for The Florida Bar itself to make political speech. Steve Lesser, who heads up some of The Florida Bar's Certifications, spoke, and said that in response to a poll they took regarding Florida Bar certification, he was surprised and heartened to hear that 60% or more of the public said that they did consider an attorney's certification as a part of their hiring process. Finally, a representative from The Bar discussed a mental health hotline for Florida Bar members. He wanted to make sure everybody knew that it was confidential, so if colleagues or attorneys you know are dealing with mental health issues, there is a very good hotline available.

K. Section/Division Liaison Reports.

1. Environmental and Land Use Law. Judge Francine Ffolkes gave the report. The Environmental and Land Use Law Section is sponsoring a webinar tomorrow. Judge Sellers is going to speak on administrative appellate law, and Judge Ffolkes said she is going to give a DOAH case law update.

2. Health Law. Bruce Lamb gave the health law report. The Health Law Section is sponsoring a webinar series on COVID-related issues. Additionally, the Section successfully supported a revision to the Patient Brokering Act which restored a safe harbor contained in federal law, which was very helpful for health practitioners because the safe harbor is one of the ways they can opine on a financial relationship and whether it is violative of the Patient Brokering Act.
3. Government Lawyer. Judge Ffolkes gave the report. She said that Jacek Stramski is replacing Judge Miller as Chair. The Section is hoping to continue to co-sponsor events with the Environmental Section in whatever format is determined to be feasible in the future.
4. YLD Liaison. Paul Drake gave the report. Recently they had a food drive benefiting a school. They have not been able to meet recently because of the Coronavirus but are hoping to continue to host functions that benefit nonprofits and other organizations.
5. RPPTL. No one was available to speak about RPPTL.
6. Labor and Employment. Judge Robert Kilbride gave the report. The outgoing President is David Adams from Tampa, and the incoming President is Robyn Hankins. Judge Kilbride knows her, and believes she is going to lead that section well. The section is hoping to be able to sponsor a trial academy similar to the one our section sponsored, hopefully sometime next year.
7. Animal Law. Gregg Morton gave the report for the Animal Law Section. The section recently sponsored a “Yappy Hour” and it was a great success. Additionally, the Section recently had a Justice’s Best Friend Day with judges from around the state including the DCAs, and some of the First DCA judges posted pictures with their dogs.

Their new Chair is John Powell from here in Tallahassee, who has an interest in wildlife. They are trying this year to recruit more lawyers in administrative practice who work at the Florida Wildlife Commission and at DBPR, and they would love to have in their section administrative lawyers in any type of law whose practice touches on animal law.

8. TFB Diversity and Inclusion. Lyyli Van Whittle gave the report. She noted that there has been a lot of interest lately in race relations, diversity and inclusion, and intrinsic bias that people might not necessarily even know they have. We came into the practice of law because we wanted to make the world a better place. She asked for feedback from our members on whether we should consider having a Zoom-style book club for people who are interested in learning more about the issues and gaining greater insight.

Judge Ffolkes noted the ABA's Diversity and Inclusion Center is a resource for books and articles dealing with diversity and inclusion in the legal profession. She also suggested that participating in a Zoom format kind of like a book club, where you read something and have a generalized discussion about it, is usually not too intimidating a situation for folks.

9. Appellate Court Rules. Gigi Rollini gave the report. The Appellate Court Rules Committee recently met, and they continued to not have any issues for the Administrative Law Practice Subcommittee. Several years ago, Judge Wetherell, Rob Telfer and Gigi reviewed Florida Rule of Appellate Procedure 9.190, and revised it, making sure it was consistent with statutes. Since then, they have had very few referrals to the Administrative Law Subcommittee.

The only rule that is administrative in nature that has been percolating through the Appellate Court Rules Committee through a substantive committee has been through the Workers' Comp Subcommittee. They have been looking at Rule 9.130, which deals with appeals from non-final orders, and they are recommending a small change to it.

Gigi stated that it is important that our Section continue to stay involved with the Appellate Court Rules Committee and pay particular attention to any suggested changes to Rule 9.190. She has completed her two terms on the Appellate Rules Committee and has rolled off of that Committee, and the Section needs to make sure that we have someone following proposed appellate rule changes.

- L. DOAH Update. Judge Francine Ffolkes gave the update. Chief Judge John MacIver is resigning from DOAH, and Judge Bob Cohen will be the interim Chief Judge. A number of the judges at DOAH have been successfully holding hearings by Zoom.

IV. Old Business.

- A. Certification.

Judge Gar Chisenhall began the discussion by stating that even though the exam was recently changed so that it is more focused on state rather than federal administrative law, they have not seen an uptick in the number of people taking the exam for two reasons. First, word really has not gotten out yet about the revised exam specifications. Second, it takes a long time to accumulate the experience and CLEs to just to sit for the exam. He recommended that we reserve a few minutes at the beginning of each CLE to mention the revised certification exam and to encourage attendees to take the exam. He believes that if the Section encourages people to sit for the exam, that will lead to an increase in certifications down the road.

Gar also suggested that the Section consider doing some CLEs by Zoom, and perhaps have them available for free, but only to members of the Section.

Judge Ffolkes recalled that years ago the Environmental Section had its own webinar license, but it cost that section thousands of dollars a year, but a Zoom subscription is not as expensive. One downside of doing CLEs by Zoom is that the programs would not subsequently be available on the Bar's website 24/7 on demand.

Bruce Lamb gave an update as to what the Certification Exam Committee is doing. In addition to deemphasizing federal administrative law on the exam, they are also trying to change the name of the certification to "Florida Government Administrative Law," deleting "Federal" from the title. They are also looking to change the composition of the certification committee, to remove one federal practitioner and add a Florida non-litigation member. Concerns have been raised about the emphasis on litigation and they are looking to broaden the qualifications for credit to include actions on behalf of agencies, writing peer-reviewed articles, service on a Florida Bar committee, and teaching, and whether to award credit for those types of experience. Additionally, they are also looking to reduce the hours required for recertification from 90 to 50 hours.

All of this was presented to the Board of Legal Specialization and Education in February, and they had some issues. One of them is that they wanted the Committee to reach out to the currently SF certified attorneys for their input, and to city, county and local government lawyers, to see whether they have any issues with the proposed name change. The Committee is reaching out to these individuals and entities so that they can report back to the Board of Legal Specialization and Education and hope to get these changes approved.

B. Membership Development.

Gigi Rollini suggested that the Section consider adopting a more strategic, targeted approach to retaining and expanding membership. She also suggested that membership development be added as an agenda item so there would be regular reporting membership. She encouraged anyone willing to help to let her or Bruce know, as they will soon be starting planning for next year.

V. Passing the Gavel.

Before passing the gavel, Brian expressed what a pleasure it had been to be Chair for the Section. He said that it is rare that you ever have to ask really for someone to help you out with something that you do not have too many volunteers to be there.

Bruce then thanked Brian Newman for his leadership and his generosity through the 2019-2020 Bar year. Among his many accomplishments was launching the Administrative Law Trial

Academy, and he has asked him to continue with that effort this coming year. He also thanked the members of the CLE Committee and all of the speakers that have assisted him over the years. He will be stepping down as Chair of CLE Committee, and hopes for a smooth transition, continuing with a robust CLE program. He thanked Calbrail, saying that those who served as officers of the Section recognize how lucky we are to have her. He then stated that this year will pose some significant new challenges for the Section, especially in providing high quality CLE. He will do everything possible to stay the course and keep the Section relevant to its members. He will send out committee appointments shortly, but can use more volunteers, especially in membership and young lawyers, as those are committees on which you cannot have too many people. He thanked the members of the Executive Council for the opportunity to serve.

VI. Adjournment.

Bruce Lamb made the motion to adjourn and Brian second it. The motion passed unanimously. The meeting was then adjourned.

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