VOL. XLIV, NO. 3 JOWANNA N. OATES AND TIFFANY RODDENBERRY, CO-EDITORS FALL 2024

From The Chair

BY LOUISE ST. LAURENT

I am thrilled to serve as Chair of the Administrative Law Section for this fiscal year and want to start by expressing my gratitude to our Immediate Past Chair, Marc Ito, for outstanding leadership of the Section with a vision to both continue our great work and advance the quality services our Section provides to membership in the coming years. This year we have an Executive Council which includes an array of both public- and private-practice attorneys. I have been extremely fortunate to work professionally with so many past ALS Chairs and understand the shoes I must now stand in and try to fill. In the same way that they contributed to my desire to become more involved in the Section and bring in many new members, perspectives, and leaders, I hope each of our members will strive to do the same. For those just becoming familiar with the Section or new to the practice of law, I encourage you to consider assisting with or even joining our standing committees either this year or in the coming year. The Section has expanded its ability to reach across Florida in both public and private sectors through the use of remote communications technologies for our Executive Council meetings and meetings of our committees. We have permanent standing committees including the Budget Committee, Long Range Planning Committee, Legislative Committee, Publications Committee, Public Utilities Law Committee, Law School Outreach Committee, Nominating Committee, Events & Social Committee, Technology Committee, Membership Committee, and CLE Committee. I encourage you to explore our Bylaws to read more about the duties our committees are tasked with.

In 2025, we will be holding our biannual premiere CLE event, the

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

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Pat Dore Conference, and have reinstituted the ad-hoc Pat Dore Conference Committee this year, along with ad-hoc committees to create a new DOAH Trial Academy fact pattern (R.I.P. Charles Jones) and a newly-created Sponsorship Committee. As we manage shifting trends in the world of The Florida Bar's finance department, we are evaluating and eventually creating various sponsorship opportunities to sustain the ability of our Executive Council members to travel for in-person meetings, our Law School Outreach Committee to continue their purpose to recruit qualified and interested law students and soon-to-be graduates to join the Section, and maintain free and low-cost Section CLE and networking events, among other priorities. The development of Legacy Sponsorship opportunities will assist in ensuring the Section continues to operate with a healthy balance and allow firms or ancillary entities to promote their services.

To those who participated in our Membership Survey, please accept the Executive Council's gratitude for your responses. This information is extremely valuable to ensuring the Section is delivering high-quality content and events that are of interest to our membership. Each Executive Council member and Committee Chair has received a copy of the summary report as well as the comments provided in response to each open-ended question asked of the members taking the survey. We are using this information to guide both what we deliver for our membership this year and in future years. Please know that a membership survey is not the only way you can provide feedback or suggestions to us. I am always open to receiving emails or phone calls about what our Section can improve, and I am confident that all other Executive Council members and Committee Chairs feel the same way. We are here to serve our membership in any way we can, so please do not hesitate to provide any feedback you may have.

APPELLATE CASE NOTES

BY LAURA DENNIS, TARA PRICE, JOHNNY ELHACHEM, LARRY SELLERS, AND GIGI ROLLINI

Endorsement Suspension—FWC Authority Based on Criminal Plea

Rachowicz v. Fla. Fish & Wildlife Conservation Comm'n, 386 So. 3d 612 (Fla. 1st DCA 2024).

Rachowicz appealed the Florida Fish and Wildlife Commission's ("FWC") suspension of his incidental take endorsement for stone crab. That suspension occurred after Rachowicz was arrested for collecting stone crab traps that belonged to another fisherman. He was criminally charged with a violation of section 379.365(2)(c)1.a., Florida States, he pled no contest to the violation, and the court withheld adjudication.

Two months later, FWC notified Rachowicz that his endorsement was being suspended due to the conviction. He challenged the suspension, which FWC upheld. Rachowicz appealed.

The appeals court reviewed FWC's final agency action under section 120.68, Florida Statutes. Thereunder, the court may set aside an order of an administrative agency "if the agency depended on any finding of fact not supported by competent, substantial evidence in the record; committed a material error in procedure; erroneously interpreted the law; or abused its discretion."

Under that standard, the appeals court rejected Rachowicz's claim that FWC's suspension of his endorsement was erroneous because his plea was not a conviction. Section 379.375(2) defines a "conviction" as "any disposition other than acquittal or dismissal, regardless of whether the violation was adjudicated[.]" § 379.375(2), Fla. Stat. (emphasis added).

But Rachowicz contended that the court held in *Griffis v. Florida Fish & Wildlife Commission,* 57 So. 3d 929 (Fla. 1st DCA 2011), that a suspension based on a plea is "unacceptable." In rejecting this argument, the court explained that in *Griffis*, the court reversed a stone crab endorsement revocation because there the plea could not support an administrative penalty under section 379.366(4). As part of the negotiated plea, Griffis pled no contest only to a charge not enumerated in section 379.366. Rachowicz's plea, on the other hand, was to molesting stone crab traps, a recognized offense under the applicable statute.

The court also rejected Rachowicz's claim that because he was not informed at the time of his no-contest plea that the disposition could result in a suspension of his endorsement, his plea was involuntary. The court explained that he was free to challenge the voluntariness of his plea in his criminal case and, if that court permitted a plea withdrawal, then FWC could reconsider its action. Until then, FWC has no authority to ignore the disposition of a criminal case on the allegation that the plea was involuntary. The court therefore affirmed FWC's suspension of Rachowicz's stone crab endorsement.

Jurisdiction—When FWC Final Order Based on Constitutional Authority, FWC Not Acting as an "Agency" and District Courts of Appeal Lack Jurisdiction

Lightsey Cattle Co. v. Fla. Fish & Wildlife Conservation Comm'n, 49 Fla. L. Weekly D1482 (Fla. 6th DCA July 12, 2024).

Lightsey Cattle Company ("LCC") appealed a final order entered by the Florida Fish and Wildlife Conservation Commission ("FWC") that upheld FWC's issuance of a conditional hunting preserve license to LCC. LCC objected to a condition placed on the license that required LCC to construct a fence around its hunting preserve.

Pursuant to its constitutional authority, FWC adopted the "Fencing Rule," which requires every private hunting preserve to be enclosed by a fence that meets certain requirements. In 1987, LCC applied for and received a license to operate a hunting preserve on Brahma Island, located on Lake Kissimmee in Osceola County. The hunting preserve encompasses the entire island. The license was valid for one year, and contained a note handwritten by a then-Bureau Chief of FWC's predecessor that stated, "water barri-

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DOAH CASE NOTES

BY GAR CHISENHALL, MATTHEW KNOLL, TIFFANY RODDENBERRY, AND KATIE SABO

***Andy Estates, LLC & Dep't of Envtl. Prot. v. Ghaneie*, Case No. 23-3972F (Final Order July 1, 2024); *Andy Estates, LLC & Dep't of Envtl. Prot. v. Tracy*, Case Nos. 23-3973F & 23-3975F (Final Order July 1, 2024); *Andy Estates, LLC & Dep't of Envtl. Prot. v. Ghaneie* Case No. 23-3974F (Final Order July 1, 2024) (Stevenson, ALJ).**

FACTS: The 10 members of Andy Estates, LLC ("Andy Estates") own lots in the Andy Estates subdivision on Merritt Island in Brevard County, Florida. The Department of Environmental Protection ("the Department") preliminarily approved Andy Estates' plan to build a 692 square-foot, multi-family dock in the Banana River Aquatic Preserve. Mansoor "John" Ghaneie and Kevin Tracy own property on either side of the proposed dock and separately filed pro se petitions challenging the Department's preliminary approval. After being referred to DOAH, both cases were consolidated. After the conclusion of the final hearing, Andy Estates filed a motion for attorney's fees pursuant to section 120.595, Florida Statutes ("the Motion"). A recommended order in favor in Andy Estates and the Department was issued, and the Department issued a final order granting a permit to Andy Estates. After receipt of the final order, Andy Estates renewed the motion for attorney's fees.

OUTCOME: Section 120.595 makes a "nonprevailing adverse party" liable for attorney's fees if it participated in the proceeding for an "improper purpose." The statute defines "improper purpose" as intending "to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation." While the ALJ recognized that Mr. Ghaneie and Mr. Tracy's pro se status caused the litigation to be more contentious than necessary, he found that they did not participate in the proceeding for an improper purpose. For instance, the ALJ found that "[t]here was no underlying devious purpose involved in their chaotic presentation. They were simply disorganized, woefully so. Their repetitiveness in presenting their cases and their unceasing belligerence toward Andy Estates' counsel were frustrating in the extreme. The undersigned is sympathetic to Andy Estates' desire to recover some portion of the legal fees they were forced to expend in these cases, but cannot find that the stringent requirements of section 120.595(1) have been met."

Agency for Pers. with Disabilities v. Vines Home Care Solutions I, Case No. 23-3774FL (Recommended Order May 6, 2024) (Horgan, ALJ).

FACTS: The Agency for Persons with Disabilities ("APD") regulates Florida's group home facilities for developmentally disabled adults. APD issued an administrative complaint alleging that Vines Home Care, Inc. ("Vines Home Care"), the holder of two licenses to operate group homes, violated sections 393.0673(1)(a)3., and 393.0673(1)(b), Florida Statutes. In an amended petition for administrative hearing, Vines Home Care disputed APD's allegations and asserted that the amended administrative complaint was based on several unadopted rules. In short, Vines Home Care argued that APD was applying too broad of an interpretation to the statutes and rules that Vines Home Care had allegedly violated.

OUTCOME: After conducting a three-day formal administrative hearing, the ALJ ultimately recommended that APD issue a final order imposing a 90-day suspension and a $1,000 fine. As for Vines Home Care's unadopted rule argument, the ALJ concluded that "[i]n defending against the charges in the Amended Administrative Complaint, Vines Home Care reasonably argued that APD was wrongfully construing the statutes and rules it claims were violated. But Vines Home Care unreasonably converted each argument into a claim that APD was relying on unadopted rules simply by taking the position that Vines Home Care violated the statute or rule." In sum, Vines Home Care "adduced no substantial evidence" that APD's amended administrative complaint contained statements of general applicability affecting similarly situated persons rather than APD's application of the law to

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Florida State University College of Law Fall 2024 Update

BY ERIN RYAN,
ASSOCIATE DEAN FOR ENVIRONMENTAL PROGRAMS AND DIRECTOR OF FSU CENTER FOR ENVIRONMENTAL, ENERGY, AND LAND USE LAW

Erin Ryan, Associate Dean for Environmental Programs

For the last several years, we've started our Fall newsletter by acknowledging the unexpectedly large hurricane that unsettled us in the first month of school—Michael, Sally, Ian, Idalia—but also the resilience that we and our neighboring communities have shown in the face of these challenges. To celebrate the fifth anniversary of this newsletter, we have been greeted recently by not one but two monster storms, Helene and Milton. Our hearts go out to all impacted by these storms, including many of our students, colleagues, and their families.

Helene was significant not only because of the reach of its devastation, but also because it is one of the first storms that scientists have now concluded was not just statistically related to a warming climate, but definitely exacerbated by it. The force of the storm and the extraordinary rainfall it conveyed was only possible due to the extreme warming of the waters of the Gulf of Mexico. As communities in Florida, North Carolina, and neighboring states continue to work through the devastation of Helene and Milton, we resolve to continue our mission of preparing the next generation of lawyers and policymakers to cope with the demands of this new era of climate related challenges. These include planning for and responding to storms, fires, droughts, and floods, and also exploring new tools of energy development, land use planning, and technologies for adaptation and mitigation.

In service of that goal, in addition to our foundational courses and exciting line up of events this fall, we invite students to register now for a host of related course offerings next Spring, such as Climate Change Science & Policy, Coastal Planning, Oil and Gas Law, Energy Law, Ocean and Coastal Law, and Environmental Policy and Natural Resources Law. There is much work to be done, and many opportunities to make a difference! Students, we hope to see you in our classes, and alums, we are grateful for the differences you are already making in the wider legal world.

Recent Faculty Scholarship and News

Shi-Ling Hsu, D'Alemberte Professor

Climate Resilience: A Typology, __ UMKC L. REV. __ (forthcoming symposium, 2025).

Recruiting Capitalism for Environmental Protection, in Can Democracy and Capitalism Be Reconciled? (Milkis, S. and S. Miller, eds, forthcoming 2024).

Erin Ryan, Elizabeth C. & Clyde W. Atkinson Professor

Public Trust Principles and Environmental Rights: The Hidden Duality of Climate Rights Advocacy and the Atmospheric Trust, 49 HARV. ENVT'L. L. REV. ___ (2024).

Brian Slocum, Stearns Weaver Miller Professor

FSU Law Stearns Weaver Miller Professor Brian G. Slocum is among the ten most-cited law faculty in the United States writing on legislation (including statutory interpretation and legislative process) based on the latest Sisk data. This ranking is for the period 2019-2023 (inclusive) and is based upon the data collected in late May/early June of 2024. Other institutions represented on this list and for this category include Yale, Harvard, Georgetown, William & Mary, Northwestern and Stanford law schools.

Tisha Holmes, Courtesy Professor of Law, Assistant Professor, Department of Ur-

CONTINUE FSU SUMMER UPDATE 2024 PAGE 10

ban & Regional Planning

Can Florida's Coast Survive Its Reliance on Development? Fiscal Vulnerability and Funding Woes under Sea Level Rise, J. OF AM. PLANNING ASSOC. (in press) (with Shi, L., Butler, W., et al.).

Recent Events

Fall 2024 Distinguished Environmental Lecture

On October 30th, the Center proudly welcomed its Fall 2024 Distinguished Lecturer, Gerald Torres. Professor of Environmental Justice, Yale School of the Environment, and Professor of Law, Yale Law School, Gerald Torres presented Environmental Justice: Environmental Joy.

"Joy, a transformative force with diverse meanings, can be a beacon enabling the pursuit of a better world. Joy can be innate, born of grace when one feels in harmony with nature, community, faith, culture, laws, policy, or even the economy. It is what injustice can take from us and what we regain when healing and repair occur. Joy is a core piece of what we seek when working for justice. It expresses the goal that sustains the work for a better world."

In his lecture, Professor Torres explained how the primary objective of most environmental and climate initiatives is to alleviate suffering and enhance well-being and explore and celebrate how environmental justice achieves these goals. The aim is to assist the field of environmental and climate justice in discovering and enhancing practices that reduce harm and promote well-being.

Climate Constitutionalism

On October 9th, the Center hosted Dr. Amanda Shanor, the Wolpow Family Faculty Scholar, Wharton School of the University of Pennsylvania for a guest lecture on Climate Constitutionalism.

Shanor asks: Does the Constitution protect a right to a clean environment? Or is it a barrier to governmental action against climate change?

Furthermore, the lecture discussed the role of constitutional law in the fight against the most challenging crisis facing

Student Spotlight

Spring 2025 graduate Hannah Robinson will have her paper, *Death Is Not the End: What Florida's Constitutional Prohibition on Agency Deference Can Predict About the Federal Administrative State Post-Chevron, with a Focus on Environmental Policy,* published in FSU's Journal of Land Use & Environmental Law this fall. Her paper has also been selected for publication in the October edition of the Florida Bar Environmental & Land Use Law Section's The Reporter. The paper explores Florida jurisprudence after the state's 2018 constitutional amendment mandating de novo review of agency interpretations, and how that prohibition on deference has looked in practice, specifically within the environmental context, to address concerns that the Supreme Court's Loper Bright decision will upend federal environmental regulations and the administrative state more broadly.

After serving as a Legislative

Fellow last year, Hannah interned in the North Carolina legislature's bill drafting division this past summer, where she gained a multi-faceted—and multi-state—understanding of the nuances of government. She hopes to return to nonpartisan legislative work after graduation.

Alumni Spotlight

Salomé Garcia, JD (Class of '23) recently received The Future40 Award for her work in energy law. Maverick Pac recognizes conservative young professionals from across the United States.

Salomé has pursued a strong interest and passion in energy policy her entire career. She is an energy attorney and political strategist located in Atlanta, Georgia, with a decade of experience in political communications, campaign strategy, and energy policy. Salomé began her career with the Republican Party of Florida, working on the campaigns for Governor Rick Scott and Congressman Carlos Curbelo and leading youth voter and volunteer efforts across South Florida.

In her career Salomé successfully worked alongside elected and regulated bodies at the local, state and federal levels on energy policy. Salomé also worked in the office of general council at the Florida Public Service Commission and currently serves as a Senior Principal at a trade association focusing on energy generation, distribution, and demand.

Salomé has published articles on Nuclear Power regulation, spoken at the University of Miami and Florida International University on energy production policy, and has helped shape energy policy platforms of elected officials since 2017.

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CALL FOR AUTHORS:

ADMINISTRATIVE LAW ARTICLES AND OTHER FEATURES

One of the strengths of the Administrative Law Section is access to scholarly articles on legal issues faced by administrative law practitioners. The Section is in need of articles for submission to the Florida Bar Journal and the Section's newsletter. If you are interested in submitting an article for the Florida Bar Journal, please email Lylli Van Whittle (Lyyli.VanWhittle@perc.myflorida.com), and if you are interested in submitting an article for the Section's newsletter, please email Jowanna N. Oates (oates.jowanna@leg.state.fl.us) and Tiffany Roddenberry (tiffany.roddenberry@hklaw.com). Please help us continue our tradition of advancing the practice of administrative law by authoring an article for either the Florida Bar Journal or the Section's newsletter. If you have interest in submitting items to be included in the Section's social media posts, please send those to Tiffany Roddenberry (tiffany.roddenberry@hklaw.com).

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er OK for existing facilities."

After this license was issued, LCC continued to apply for and receive annual license renewals every year notwithstanding that LCC had not complied with the Fencing Rule. Indeed, FWC's annual inspection reports for the hunting preserve often contained references to the exemption from the Fencing Rule and noted that the exemption was granted in 1987.

In 2021, FWC changed its position with respect to the Fencing Rule. When LCC's license came up for its annual renewal that year, FWC granted LCC only a conditional hunting preserve license, conditioning LCC's ability to operate the hunting preserve on the requirement that LCC erect a fence that complied with the Fencing Rule around the hunting preserve. The license provided that LCC's failure to comply with the Fencing Rule within twelve months would result in denial of LCC's license renewal for the following twelve-month period.

LCC challenged FWC's issuance of the conditional license, and specifically the condition that LCC comply with the Fencing Rule, by filing a petition for an administrative proceeding pursuant to sections 120.569 and 120.57, Fla. Stat. (FWC has adopted a Due Process Rule that adopts these sections of the APA.) While LCC requested a formal hearing under section 120.57(1), FWC claimed there were no disputed issues of material fact and granted LCC an informal hearing.

Following the informal hearing, the hearing officer issued a recommended order that denied LCC's challenge to the conditional hunting preserve license. The hearing officer adopted FWC's position that it cannot legally grant an exemption to the Fencing Rule, notwithstanding the notation on LCC's 1987 license. LCC submitted exceptions to the recommended order, but FWC entered a final order that rejected the exceptions, accepted the recommended order, and upheld the issuance of LCC's conditional hunting preserve license. LCC appealed.

Both parties agreed that the court had jurisdiction to hear the appeal. But the court disagreed, noting "the parties cannot confer jurisdiction on the court that it does not have by agreement or acquiescence" and that courts "have an independent obligation to examine [their] jurisdiction in every case."

Article V, section 4(b)(2) of the Florida Constitution establishes the basic jurisdiction of district courts of appeal to review the action of administrative agencies by direct appeal. "District courts of appeal shall have the power of direct review of administrative action, as provided by general law." Thus, for a district court of appeal to have jurisdiction over a direct appeal of an action by an administrative agency, there must be a general law prescribing such jurisdiction. The only general law that the parties cited in support of their assertion that the court possessed jurisdiction over the appeal was APA section 120.68, which states "[a] party who is adversely affected by final agency action is entitled to judicial review." The court observed, however, that the FWC, when acting pursuant to its constitutional powers, is not an "agency" as defined by the APA. Its actions therefore are not "agency action."

The APA provides that the FWC is an "agency" only if acting pursuant to powers other than those derived from the Florida Constitution. Here, the FWC promulgated the Fencing Rule pursuant to its constitutional authority under article IV, section 9 of the Florida Constitution. In enforcing the Fencing Rule, FWC was exercising the executive power of the State with respect to wild animal life, also pursuant to its constitutional authority. FWC therefore was not an "agency" for purposes of the APA. Consequently, a party who is adversely affected by FWC's adoption or enforcement of the Fending Rule is not "adversely affected by final agency action" under the APA, because FWC, for purposes of the Fencing Rule, is not an "agency" as defined in the APA. The appeals court found no general law authorizing its jurisdiction to decide a direct appeal of the action taken by FWC in this case. The court concluded that LCC's remedy instead was to seek review of FWC's final order by writ of certiora-

ri in circuit court. Accordingly, the court transferred LCC's petition to the Circuit Court of the Ninth Judicial Circuit in and for Osceola County.

Jurisdiction—PSC Has Exclusive Jurisdiction to Determine Threshold Issues Relating to Disaster Preparedness

Florida Power & Light Co. v. Velez, 395 So. 3d 562 (Fla. 3d DCA 2024) (on reh'g en banc).

Florida Power & Light Company ("FPL") appealed from a nonfinal order certifying a class in an action seeking damages resulting from Hurricane Irma-related service interruptions. After the appeals court affirmed the class certification on direct appeal, FPL sought rehearing en banc or clarification. While that motion was pending, the Legislature enacted section 366.98, Florida Statutes. In supplemental briefing submitted due to the legislative change, FPL argued that the exclusive jurisdiction to determine threshold issues relating to disaster preparedness now lies with the Public Service Commission ("PSC").

The appeals court agreed. Courts previously had jurisdiction over tort claims and the PSC's authority was limited to conducting administrative fact-finding regarding billing disputes and rates for electric power. But effective July 1, 2023, section 366.98, Florida Statutes, expanded the jurisdiction of the PSC stating, in pertinent part: "Consistent with the [PSC]'s jurisdiction over public utility rates and service, issues relating to the sufficiency of a public utility's disaster preparedness and response shall be resolved by the [PSC]." Beginning the statutory analysis with the plain language of the new statute, the court determined that its plain reading reflects the tribunal now charged with resolving issues relating to the sufficiency of a public utility's disaster preparedness and response is the PSC, not the courts. This shift in jurisdiction from the courts to the PSC is mandatory as evidenced by the phrase "shall be resolved."

Jurisdictional statutes such as this "speak to the power of the court rather than to the rights or obligations of the parties." Unlike other intervening changes in the law, jurisdiction-conferring or stripping statutes "take[] away no substantive right but simply change[] the tribunal that is to hear the case" (quoting Hamdan v. Rumsfeld, 548 U.S. 557 (2006)). Thus, such changes are presumed to apply retroactively.

Concluding that the instant dispute centered around service interruptions suffered by consumers in the wake of a natural disaster, the appeals court held that the PSC has exclusive jurisdiction to determine preliminary liability relating to the sufficiency of FPL's disaster preparedness. The court therefore reversed the order under review and remanded with instructions to stay the trial court proceedings pending the PSC's resolution of the threshold issues.

Licensing—Error Rejecting Concealed-Carry Firearm License for Lack of Evidence to Support Disqualification under Federal Law

J.C. v. Dep't of Agric. & Cons. Servs., 389 So. 3d 744 (Fla. 1st DCA 2024).

J.C. appealed the Department of Agriculture & Consumer Services, Division of Licensing's ("Division") final order denying his application for a concealed firearm license.

The Division sent J.C. a letter denying J.C.'s application for a concealed-carry license based upon a misdemeanor conviction eight years earlier. The Division determined that J.C.'s conviction was a disqualifying offense under section 790.06(2)(n), Florida Statutes, which permits the Division to deny concealed-carry applications if the applicant is "prohibited from possessing or purchasing a firearm . . . [under] federal law." The Division determined that 18 U.S.C. §§ 922(g)(9) and 921(a)(33)(A)(ii) prohibit a person from purchasing or possessing a firearm if that person was convicted of a "misdemeanor crime of domestic violence," an element of which is the use of force against a person who is comparable to a spouse.

J.C. requested a formal administrative hearing. During the hearing, the evidence showed that J.C. was living with A.K., a person with whom he had a sexual relationship. J.C. and A.K. had lived together for approximately two months when, on December 8, 2014, J.C. was arrested for battery on A.K. J.C. appeared before county court, the court withheld adjudication, and J.C. was placed on probation for battery. The court subsequently imposed a sentence of time

>CONT. *APPELLATE CASE NOTES*

served in county jail after J.C. and the State agreed that J.C.'s probation would be revoked.

J.C.'s battery conviction and sentence did not qualify as domestic violence battery on its own, but J.C. agreed to complete the batterers' intervention program pursuant to section 741.281, Florida Statutes, as a part of his probation. The ALJ concluded that, based upon the evidence of law enforcement officers and J.C.'s statements, J.C. had a relationship with A.K. like that of spouse. The ALJ recommended that the Division deny the license, finding that J.C.'s battery against A.K. constituted a misdemeanor crime of domestic violence under federal law. The Division adopted the ALJ's recommended order and issued a final order denying J.C.'s application for a concealed-carry license. J.C. appealed.

On appeal, the Division argued that J.C.'s appeal was moot because the Legislature expanded the list of individuals (to include J.C.) who did not need to apply for a concealed-carry license. But the majority rejected this argument because the Division had determined that J.C. had committed a misdemeanor crime of domestic violence, and that determination would still prohibit J.C. from qualifying under the statute to lawfully carry a concealed firearm without a license.

Next, the majority rejected the Division's conclusions that J.C.'s battery conviction constituted a misdemeanor conviction of domestic violence. The majority held that J.C.'s battery conviction against a victim with whom J.C. was in a dating relationship would currently qualify as a domestic violence conviction under federal law, because federal statutes define domestic violence offenses to include victims in a current or former dating relationship. But the majority determined that Congress expanded the domestic violence definition in 2022 to include dating relationships, and the law was not retroactive. Thus, J.C.'s 2014 battery conviction would not qualify under the prior version of federal law, unless J.C.'s and A.K.'s relationship could be comparable to that of spouse.

The majority then held that the Division erred because the evidence did not show that J.C.'s relationship with A.K. was equivalent to that of spouse. The majority reasoned that they did not own property together, sign a lease together, hold themselves out as spouses or take any other action that would be the equivalent of that of spouse.

Instead, the majority found that the dating relationship was "quite brief" and "lacked the hallmarks of marriage." Notably, the majority explained that the Division could not conclude that the couples' relationship was equivalent to a marriage based upon "a brief cohabitation and sexual relations." Thus, the majority opinion ruled that the Division erred when it denied J.C.'s concealed-carry license because his state law conviction of battery did not qualify as a misdemeanor offense of domestic violence under federal law.

Judge Bilbrey concurred in result and wrote to further explain differences between federal and Florida law, and to explain that the majority opinion should not be construed to require a common law marriage to qualify as a disqualifying offense under federal law.

Judge Bilbrey also advised J.C. that the majority's ruling did not extend so far as to prohibit a future determination that J.C. was in violation of federal law. Rather, Judge Bilbrey noted that the Division did not provide facts sufficient to disqualify J.C. during the appeal, but that the federal government could make this determination in the future depending on the available evidence at that time.

Public Records—Writ of Mandamus Not Available to Anonymous Petitioner

Doe v. DeSantis, 390 So. 3d 1245 (Fla. 1st DCA 2024).

This case arises from an appeal of a circuit court order denying mandamus and declaratory relief related to a public records request. Appellant Doe emailed an anonymous public records request to the Governor's Office, asking for materials between or among the Governor and others within his office and the group of "six or seven pretty big legal conservative heavyweights" the Governor referenced in an interview as being his advisors for his Florida Supreme Court judicial appointments.

Shortly thereafter, Appellant "J. Doe, anonymously and individually, a/k/a 'FloridaSupreme-

CourtPRR@protonmail.com'" filed a petition for writ of mandamus, a complaint to enforce the Public Records Act, and an ex parte motion for alternative writ of mandamus in the circuit court. The circuit court denied the petition, dismissed the complaint, and denied Doe's request for declaratory relief, concluding that a writ of mandamus was not available to an anonymous petitioner and, even if it was, Doe failed to state a claim for mandamus relief.

The appeals court affirmed. First, the court explained that Florida Rule of Civil Procedure 1.630(b)(3) requires petitions for writ of mandamus to be filed "in the name of the petitioner." Moreover, Rule 1.100(c)(1) requires all pleadings to have a caption containing the name of the parties. The court stated that Florida recognizes a "strong presumption of openness for all court proceedings"; therefore, anonymity should only be reserved for exceptional circumstances. Noting that Doe did not seek leave to file the petition anonymously and did not present circumstances which would warrant anonymity, the appellate court affirmed the circuit court's denial of mandamus relief.

Second, the appellate court affirmed the circuit court's finding that Doe did not demonstrate a clear legal right to a public officer's performance of a clear legal duty. In particular, the court explained that Doe ultimately sought a list of those names that comprised the "big legal conservative heavyweights," but such request would require the records custodian to consult with the Governor to determine to whom he was referring. The court noted that this was more akin to an interrogatory seeking information rather than a request for public records. Accordingly, the court held that Doe's request was not specific enough; therefore, Doe failed to demonstrate a legally sufficient claim for mandamus.

Lastly, the appellate court commented that after denying Does's petition on procedural grounds, the circuit court "unnecessarily" considered the merits of the petition by ruling that the identities of the "big legal conservative heavyweights" were protected under the doctrine of executive privilege. The appellate court declined to rule on the propriety of the circuit court's ruling regarding executive privilege, noting the ruling was "irrelevant and unnecessary."

Public Service Commission—Court Withdraws that PSC Is Not Subject to the APA

Pub. Counsel ex rel. Citizens of Fla. v. Fla. Pub. Serv. Comm'n, 386 So. 3d 637 (Fla. 1st DCA 2024).

The Public Counsel sought judicial review of a ratemaking action of the Florida Public Service Commission ("PSC"). It was filed as a petition for review of non-final agency action under section 120.68(1)(a), Florida Statutes. The Public Counsel thereafter filed a notice of voluntary dismissal under Florida Rule of Appellate Procedure 9.350(b) prior to decision. In response, the appeals court dismissed the petition, but did so in an order that stated the APA does not apply to quasi-legislative functions like the interim ratemaking being challenged.

Both the Public Counsel and the PSC filed motions for clarification, rehearing, rehearing en banc, or for certification of a question of great public importance. Among other things, the parties took issue with the court's statement that the APA does not apply to quasi-legislative functions like the challenged interim ratemaking and to any suggestion that the PSC is not subject to the APA.

The court granted the party's motions, withdrew its prior order of dismissal, and substituted another order in its place that no longer suggests that the APA does not apply to interim ratemaking or that the PSC is not subject to the APA.

Instead, the appeals court focused on a procedural issue, noting the petition for review of non-final agency action that instituted judicial review was filed under section 120.68(1)(a), Florida Statutes. The court explained that section 350.128(1), Florida Statutes, more specifically states that the court "shall, upon petition, review any action of the Commission" other than action "relating to rates or services of utilities providing electric, gas or telephone service." The court observed that, by comparison, section 120.68(2)(a) provides that review shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida

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Rules of Appellate Procedure. Accordingly, the court elected to treat the petition as one seeking review of action of the PSC under section 350.128, Fla. Stat.

In a footnote, the court went on to suggest that the Appellate Court Rules Committee consider revisions to Florida Rules of Appellate Procedure 9.030(b), 9.100(c), 9.110(c), and 9.190(b)-(c) to address the specific nature of review directed by section 350.128, Fla. Stat.

Noting the Public Counsel filed a notice of voluntary dismissal, the court dismissed the petition.

Retirement Benefits—Order Could Not Modify Statutory Window for Retirement Benefits

Brown v. Fla. Dep't of Mgmt. Servs., 388 So. 3d 1110 (Fla. 1st DCA 2024).

Appellant's former husband retired on July 1, 1998. The former husband was a member of the Florida Retirement System ("FRS") pension plan, whose benefits are governed by section 121.091, Florida Statutes. The former husband selected a monthly retirement benefit under section 121.091(6)(a) that would be granted to the retiree for life, but if the retiree died within the first 10 years after retirement, then his designated beneficiary would receive the same monthly amount payable for the remainder of the 10-year period.

Appellant's marriage with her former husband was dissolved in 2003. The Qualified Domestic Relations Order entered by the court required that Appellant remain the designated beneficiary under the former husband's FRS retirement benefits. However, the order did not, and could not, change any of the benefits accrued under section 121.091, Florida Statutes, including the 10-year window for a survivor benefit elected by the husband.

The former husband died in 2017, more than 19 years after his retirement date, and more than 9 years after the 10-year window provided for under section 121.091. Accordingly, the Florida Department of Management Services, Division of Retirement ("Division") found that Appellant was not entitled to any additional retirement benefits from her late former husband's FRS account. Because Appellant failed to establish any statutory ground to set aside the Division's final order, the appeals court affirmed.

Rule Challenge—Florida Gaming Control Commission Can Regulate Who May Participate in Cardroom Games

S. Marion Real Estate Holdings, LLC, d/b/a Oxford Downs v. Fla. Gaming Control Comm'n, No. 387 So. 3d 1246 (Fla. 5th DCA 2024).

The owner of a casino and cardroom in Marion County, Florida, and one of its employees, a holder of a cardroom employee occupational license ("Appellants"), appealed a DOAH final order which upheld the validity of Fla. Admin. Code Rule 61D-11.005(5) (2022) (Rule). Appellants had challenged the Rule (which prohibits cardroom license-holders from gambling where they work) as an invalid exercise of delegated legislative authority that exceeded the Florida Gaming Control Commission's ("Commission") grant of rulemaking authority and enlarged, modified, or contravened the specific provisions of the law that it implemented.

In their challenge, Appellants argued that even though sections 550.0251(12) and 849.086(4), Florida Statutes, grant rulemaking authority to the Commission, they nonetheless fail to provide a specific power or duty that the Rule may implement. Specifically, they argued that the language of these statutory provisions does not satisfy section 120.52(8)'s "flush-left" paragraph, which states that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule and that a specific law to be implemented is also required.

In affirming the final order, the appeals court examined the statutory language in sections 550.0251(12) and 849.086(4)(a) and determined that they impose a specific duty on the Commission to regulate and to adopt rules relating to the operation of cardrooms.

Having determined that the Rule falls within the Commission's rulemaking authority, the court examined whether the Rule enlarges, modifies, or contravenes section 849.086. Appellants contended that it does because other subsections of section 849.086 already address who may be prohibited from playing.

They argued that these subsections are exhaustive and that the canon of expressio unius est exclusion alterius prevents the Commission from expanding the list. For instance, Appellants asserted that because section 849.086(12)(b) only prohibits minors from playing, the Commission lacks the authority to prohibit others. Similarly, they argued that section 849.086(7)(g), which empowers cardroom operators to refuse certain individuals, does not extend this authority to the Commission.

The court rejected Appellants' application of the negative-implication canon and held that the contextual elements of section 849.086 do not imply a limitation on the Commission's authority to restrict cardroom licensees from gambling where they work.

Finally, the court rejected the Appellants' argument that the Commission's duty and power to regulate cardroom operations are not specific enough and that validating the Rule would amount to a grant of broad regulatory power which would result in unrestricted discretion. In rejecting same, the court clarified that the issue is not whether the grant of rulemaking authority and the provisions of law implemented are specific enough, but rather whether the statute contains a specific grant; here, it does.

The court therefore affirmed the DOAH final order upholding the Rule as a valid exercise of delegated legislative authority.

Standing—Orders Granting Variance for Ownership Structure Changes to Medical Marijuana Treatment Centers

Weisser v. Fla. Dep't of Health, 388 So. 3d 1148 (Fla. 1st DCA 2024).

Michael Weisser appealed the Department of Health's ("DOH") final order dismissing his petition for an administrative hearing to challenge DOH's approval of GrowHealthy's variance request.

GrowHealthy is a medical marijuana treatment center that is a wholly owned subsidiary of iAnthus Capital Holdings ("iAnthus"). Weisser is a shareholder of iAnthus. DOH regulates medical marijuana treatment centers and a part of that regulation is ensuring that such centers do not violate a dual ownership prohibition found in section 381.986(8)(e)2., Florida Statutes.

GrowHealthy sought to change its ownership structure and submitted a variance request to DOH. Separately, iAnthus and other business entities entered into an agreement which stated that if DOH approved GrowHealthy's variance request, those business entities would receive an equity share in iAnthus.

After DOH approved GrowHealthy's variance request, Weisser petitioned for an administrative hearing, arguing that iAnthus's agreement with the business entities was a violation of the dual ownership prohibition in section 381.986(8)(e)2. The petition was referred to DOAH, where the ALJ determined that Weisser lacked a substantial interest in GrowHealthy's variance request and recommended that DOH dismiss Weisser's petition. DOH adopted the ALJ's recommended order and issued a final order dismissing the petition. Weisser appealed.

The appellate court discussed the Agrico test required for a third party to demonstrate standing in an administrative challenge. First, the third-party "must show . . . that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing" (quoting *Agrico Chem. Co. v. Dep't of Envtl. Prot.*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981)). Weisser claimed that the agreement between iAnthus and the business entities would give the business entities 97.25% of iAnthus's stock and leave the other shareholders with only 2.75%, which he argued diluted his interest in iAnthus. He also argued that GrowHealthy and its patients would be negatively affected. The appellate court rejected this argument, reasoning that Weisser's claimed injuries did not result from DOH granting GrowHealthy's variance request. Instead, his injuries resulted from GrowHealthy's ownership restructure.

Second, *Agrico* states that it requires a third-party challenger to show "that his substantial injury is of a type or nature which

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the proceeding is designed to protect." The appellate court reasoned that Weisser's claimed injuries also were not the type that section 381.986, Fla. Stat., is designed to protect. Rather, that statute was designed to regulate medical marijuana treatment centers and ensure patient access. Because the statute was not designed to protect individual shareholders during ownership reorganizations, Weisser lacked standing to challenge GrowHealthy's variance request. Thus, the court affirmed DOH's final order dismissing Weisser's petition for an administrative hearing to challenge DOH's order granting GrowHealthy's variance request.

* * * * *

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the particular facts of Vines Home Care's case.

Carney v. City of Cape Coral, Case No. 23-1786 (Recommended Order June 10, 2024) (Van Wyk, ALJ).

FACTS: The Department of Environmental Protection ("the Department") filed a notice of intent to issue Environmental Resource Permit No. 244816-006 ("the ERP") to the City of Cape Coral ("the City") for several water quality projects in the South Spreader Waterway in Lee County, one of which was the removal of the Chiquita Lock. Three residents of the City, Daniel Carney, James Collier, and Kevin Sparks (collectively referred to as "the Petitioners") filed a petition alleging the ERP violated the public interest test set forth in section 373.414, Florida Statutes. The Petitioners also alleged that the findings of fact and conclusions of law from the final order in *Matlacha Civic Association, Inc. v. City of Cape Coral*, Case No. 18-6752 (Fla. DOAH Dec. 12, 2019; Fla. DEP Mar. 11, 2020), governed the outcome of the case through the doctrines of *res judicata*, collateral estoppel, and *stare decisis*. **OUTCOME:** The ALJ concluded that the ERP was not contrary to the public interest and thus recommended that the ERP be issued. In the course of doing so, the ALJ determined that Mr. Carney did not satisfy the first prong of the *Agrico* standing test. While he alleged that current conditions were negatively impacting his enjoyment of fishing due to a decline in the seagrass habitat, he did not allege a "real and immediate threat" from the removal of the Chiquita Lock. In contrast, Mr. Collier and Mr. Sparks satisfied the first *Agrico* prong by alleging that their interests in fishing could be negatively impacted by the Lock's removal. As for the Petitioners' arguments regarding the final order from the *Matlacha Civic Association* case, the ALJ concluded that *res judicata* and collateral estoppel did not apply because the parties were not the same. As for *stare decisis*, the ALJ explained that doctrine did not apply because the *Matlacha Civic Association* "was not a decision of a district court of appeal." ***FTG Dev., Inc. v. Dep't of Health, Office of Medical Marijuana Use*, Case No. 23-4502RE (Final Order June 26, 2024) (Watkins, ALJ).**

FACTS: The State of Florida established a statutory preference for granting medical marijuana treatment center ("MMTC") licenses to African American farmers certified as classes in the discrimination lawsuits in *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) ("*Pigford*"), and *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011) ("*BFL*"). Specifically, section 381.986(8)(a)2.b., Florida Statutes (known as the "*Pigford* Provision"), directs the Florida Department of Health, Office of Medical Marijuana ("the Department") to award one MMTC license to an applicant recognized as a member of the *Pigford* or *BFL* class. The Department implemented the Pigford Provision through Emergency Rule 64ER21-16 ("the application rule"). Earkus L. Battle, Sr. was a member of the BFL class. Mr. Battle assigned his rights as a class member to John Allen, the majority owner of FTG Development Inc., in exchange for ownership interest in the company. Several months later, Mr. Battle died. Subsequently, FTG applied for an MMTC license as a *BFL* class member, which the Department denied. FTG and Mr. Allen challenged the application rule and the Department's definition of an applicant in Rule 64ER20-31(2) on the ground they are invalid exercises of delegated legislative authority, asserting, among other things, that the Legislature intended the phrase "recognized class member" to include both the class member *and* the class member's heirs and/or assigns, consistent with how the term "class member" was defined in the *BFL* settlement agreement.

OUTCOME: The ALJ concluded the petitioners did not establish any basis to invalidate the rules. Relying on the plain language of the *Pigford* Provision, the ALJ rejected the petitioner's legislative intent argument, reasoning the *Pigford* Provision does not mention heirs/assigns nor the *BFL* settlement agreement, much less require the Department to adhere to the agreement's definitions. The ALJ also highlighted that the *Pigford* Provision uses the phrase "*recognized* class member," which is neither used nor defined in the settlement agreement; instead, that phrase was used only in the *BFL* opinion in the context of describing the process for reviewing class membership, which the ALJ found the Department reasonably relied upon in implementing its rules.

***Richard Chilson v. Dep't of Fin. Servs.*, Case No. 24-1863 (Recommended Order July 12, 2024) (Nelson, ALJ).**

FACTS: The Department of Financial Services ("the Department") is responsible for licensing nonresident health insurance agents in the State of Florida. Richard Chilson applied for licensure as a nonresident health insurance agent. Mr. Chilson responded affirmatively to a question on his application asking, in part, if he had ever been convicted of a misdemeanor. The Department subsequently notified Mr. Chil-

son that, pursuant to section 626.611(1)(n), Florida Statutes, his application was being denied because he had pled guilty in 1994 to one count of sexual abuse in the second degree, a class A misdemeanor in New York. The case was referred to DOAH for a final hearing.

OUTCOME: The ALJ noted in her recommended order that section 626.611(1)(n) does not require denial of licensure for *all* past convictions or pleas. Instead, the statute provides for licensure denial in three instances: (1) for misdemeanors directly related to the financial services business; (2) for any felony; and (3) for any crime punishable by imprisonment of at least one year. The Department failed to demonstrate that Mr. Chilson's crime fell into any of the aforementioned categories. As for the Department's argument that section 626.207, Florida Statutes, could serve as a basis for denial even though that statute was not cited in the Department's notice of denial, the ALJ concluded that statute could not serve as a basis for denial because the Department had not moved to amend its notice of denial. Finally, in response to an argument in the Department's proposed recommended order that an agency's statutory interpretations is entitled to great deference, the ALJ noted that the Florida Constitution was amended in 2018 prohibiting "a state court or an officer hearing an administrative action" from deferring to an administrative agency's interpretation of state statutes or rules. Instead, a *de novo* interpretation must be used. Ultimately, the ALJ recommended that the Department approve Mr. Chilson's application.

***Huckabee v. Dep't of Mgmt. Servs.*, Case No. 24-0960RU (Final Order May 23, 2024) (Cohen, ALJ).**

FACTS: Mr. Huckabee was employed by the Department of Highway Safety and Motor Vehicles ("the Department") as a lieutenant with the Florida Highway Patrol ("FHP"). During off-duty time while employed by FHP, Mr. Huckabee's on-line interactions with a member of the public resulted in a criminal investigation by the FBI. After learning of the investigation, the Department terminated Mr. Huckabee. In support thereof, the Department cited: (1) Department Policy 3.06 pertaining to "Disciplinary Process"; (2) FHP Policy 3.02 pertaining to "Code of Conduct: Code of Ethics"; (3) FHP Policy 3.03 pertaining to "Code of Conduct: Regulations"; and (4) rules 60L-36.005(3)(e), (f), and (g) promulgated by the Department of Management Services ("DMS"). Rule 60L-36.005 sets out the minimum standards of conduct that apply to all employees in the State of Florida's personnel system. After receiving notice of the Department's proposed termination, Mr. Huckabee challenged the aforementioned rule and policies as being invalid exercises of delegated legislative authority.

OUTCOME: The ALJ concluded that Mr. Huckabee did not have standing to challenge rule 60L-36.005. Because DMS has no authority to discipline an employee of another agency, the ALJ concluded that DMS was an improper party to the proceeding and that the portion of Mr. Huckabee's petition pertaining to DMS had to be dismissed. As for the three policies noted above, the ALJ determined that they were "internal management memoranda" rather than unadopted rules. The ALJ explained that "[t]he three DHSMV personnel policies challenged by [Mr. Huckabee], which only relate to him in his capacity as a DHSMV employee, do not apply outside of the agency, nor do they in any way affect a member of the general public."

***Hybrid Pharma, LLC v. Dep't of Health*, Case No. 24-1235RU (Summary Final Order June 3, 2024) (Horgan, ALJ).**

FACTS: Hybrid Pharma, LLC ("Hybrid") is an FDA-registered outsourcing facility pursuant to section 503B of the federal Food, Drug & Cosmetic Act ("the Act"). The Department of Health ("the Department") is responsible for inspecting and

investigating pharmacy licensees, and the Board of Pharmacy, within the Department, has the authority to adopt rules implementing chapter 465 of the Florida Statutes. In August 2023, the Department began using a "503B Outsourcing Inspection" form ("the Form") to inspect outsourcing facilities. Each heading and individual criterion therein cites a section or subsection of 21 C.F.R Part 211. The Department inspected Hybrid's operations using the Form. The inspection did not lead to the Department initiating an investigation of Hybrid, and there is no indication that the Department was considering opening an investigation. Hybrid filed a petition alleging that the inspection criteria in the Form amount to unadopted rules.

OUTCOME: The ALJ concluded that the Form is not an unadopted rule. In doing so, the ALJ noted that the Department has taken no action based on the inspection. "Only once [the Department] attempts to enforce a criterion in the form might an unadopted rule possibly exist (and then only if the 'generally applicable' requirement is met)." The ALJ also concluded that the Form merely reiterates the requirement in Florida Administrative Code Rule 64B16-27.797 that outsourcing facilities such as Hybrid must comply with Part 211.

***United Faculty of Fla. v. Dep't of Mgmt. Servs.*, Case No. 24-0017F (Final Order July 11, 2024) (Desai, ALJ).**

FACTS: The United Faculty of Florida ("UFF") is a labor organization that represents faculty members at the 12 universities in Florida's State University System. The Department of Management Services, Division of Retirement ("the Division") administers the Florida Retirement System ("FRS"), and all state university faculty members are compulsory members of FRS. In June 2021, a Division employee sent an email to the University of Central Florida describing a significant change in how the Division defined "termination." On April 27, 2022, another Division employee transmitted an email to the Associate Vice President for Human Resources at the University of West Florida stating that a termination of employment has not occurred if the employer and employee know at the time of retirement, with reasonable certainty, that the employee will perform services for the employer at a future date. On October 10, 2022, UFF filed a petition alleging that the aforementioned statements amounted to unadopted rules. On April 25, 2023, UFF filed an amended petition seeking to add a related claim arising from the unadopted rules cited in the initial petition. The ALJ issued a final order in November 2023 concluding the statements at issue were unadopted rules. UFF subsequently filed a motion for attorney's fees and costs pursuant to section 120.595(4), Florida Statutes. This statute provides that, in cases involving unadopted rules, an agency shall pay the prevailing party's fees and costs "upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed." UFF argued, in part, that the initial petition filed on October 10, 2022, satisfied the notice requirement given that the initial petition was followed by an amended petition.

OUTCOME: In rejecting UFF's argument, the ALJ concluded that "to allow a previous petition that initiated a rule challenge at DOAH to serve as notice for an amended petition (adding an additional related claim) would defeat the purpose of the notice requirement: to avoid litigating (and incurring associated costs and fees) whether certain agency statements [are] unadopted rules." The ALJ cited a Florida Bar Journal article, by Lawrence Sellers, entitled *The 2008 Amendments to the APA: Open Government Act* for the proposition that the 30-day notice requirement provides a "safe harbor" during which an agency can initiate rulemaking and avoid liability for attorneys' fees.

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