



# Administrative Law Section Newsletter

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Elizabeth W. McArthur, Editor

September 2006

## From the Chair

by Patrick L. "Booter" Imhof

CALLING ALL MEMBERS! As I assume the mantel as Chair of the Administrative Law Section, I want to invite you as a member of the Section to get involved. As the immediate Past-Chair, Debby Kearney noted in her column at the beginning of her term, we always need articles for *The Florida Bar Journal* and the *Administrative Law Section Newsletter*. We have several committees that always need assistance from section members.

How do you get involved? There are several ways:

1. Write an article for the *Bar Journal* and submit it to Debby Kearney ([debby.kearney@myfloridahouse.gov](mailto:debby.kearney@myfloridahouse.gov)); or write an article for the newsletter and submit it to Elizabeth McArthur ([emcarthur@radeylaw.com](mailto:emcarthur@radeylaw.com)).

2. Contact the chairs of one of the committees and get involved in the work of the committee. The committees are open to all section members. The committees and liaison contacts are listed on the Section's website, <http://www.fladminlaw.org/aboutus/committees.asp>.

3. Come to an Executive Council meeting; we plan to post the dates on our website. Attending a meeting will give you an idea of what you want to get involved in and what types of business the Executive Council is engaged in on behalf of the Section. The Section always has its Annual Membership Meeting at The Florida Bar Annual Convention. We had several

section members who were not Executive Council members attend this past meeting, June 23, 2006, in Boca Raton.

4. Attend the Pat Dore Conference and meet your fellow lawyers who are interested in administrative law. It will be held on October 19 and 20, 2006, in Tallahassee. The program will be outstanding again this year. Information will be on the Section's website and in the *Bar News*.

5. Attend the Basic Administrative Law course sponsored by the Young Lawyers Division. It will be held for the first time this year in December 2006. A representative from the Section will be at the seminar to answer questions about the Section and to pass out section literature. This course will be a great introduction to the field of administrative law. The live course will be held in Tallahassee and videotape replays will be held around the state. Check the Bar's website and the *Bar News* for times and locations near you. Of course, attendance counts toward the three substantive courses for new lawyers under the Practicing with Professionalism requirements.

As you may or may not be aware, the Florida Supreme Court has approved certification for State and Federal Government and Administrative Practice effective August 1, 2006. President Coxe will be appointing the inaugural nine-member certification committee by early September. This issue caused consider-

able debate within the Section's Executive Council last year.

We have just changed the Internet provider for the Section's website and will be working to keep the website up to date. Again, the URL for the website is <http://www.fladminlaw.org>; I hope you will visit it often.

I look forward to serving as your Chair for the next year.

*Patrick L. "Booter" Imhof is the Staff Director for the Senate Committee on Regulated Industries. He has been employed by the Florida Legislature for over 25 years in both the Senate and the House of Representatives. Mr. Imhof received his B.A. degree in Political Science from the University of Florida in 1972 and his J.D. degree from South Texas College of Law, Houston, Texas in 1978. He is a member of The Florida Bar and the State Bar of Texas. He is currently the Chair of the Administrative Law Section of The Florida Bar.*

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# The 2006 Amendments to the APA

by Lawrence E. Sellers, Jr.

In 2005, Governor Jeb Bush vetoed<sup>1</sup> a bill that would have amended the Administrative Procedure Act (APA).<sup>2</sup> This year, the Legislature again approved similar legislation, but incorporated several changes designed to address the Governor's concerns. Here's a brief summary of some of the key provisions in the 2006 bill, Chapter 2006-82.

**Expands E-Rulemaking to All Agencies.** Initially, the principal purpose of the bill was to provide for "internet noticing" for all agencies. Several years ago, the Legislature created a pilot project by which DEP publishes its official notices on its website, rather than in the *Florida Administrative Weekly*. Section 4 of the 2006 bill expands this project to all state agencies by providing for the electronic publication of the *Weekly* on an internet website managed by the Department of State.<sup>3</sup> Those of you who prefer the paper version can relax: the Department is required to continue to publish a printed version of the *Weekly* and to make copies available on an annual subscription basis. The 2006 bill requires this website to allow users to search notices, subscribe to an automated e-mail notification of selected notices, and to comment electronically on proposed rules. The Department recently has established a new Florida

Government Electronic Rulemaking System, which may be found at [www.flrules.com](http://www.flrules.com).

**Provides for Equitable Tolling.** Several judicial decisions, *in dicta*, have suggested that the doctrine of equitable tolling may be applied to extend the administrative time limit in cases where the petitioner "has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum."<sup>4</sup> However, two commentators have questioned the continuing application of equitable tolling in light of the Legislature's clear expression that untimely petitions for hearing may not be considered.<sup>5</sup> Section 6 of the 2006 bill revises section 120.569(2)(c) to simply provide that "this paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition." Language in the 2005 bill that was intended to codify the judicial definition of equitable tolling was not retained,<sup>6</sup> as this language was one of the stated reasons for the Governor's veto.<sup>7</sup>

**Revises Required Contents of Petition in Enforcement and Disciplinary Cases.** Chief Judge Gerald Cope of the Third District recommended that the Legislature

amend the provisions in the APA governing the sufficiency of a petition when the administrative action is initiated by the filing of an administrative complaint by the agency.<sup>8</sup> In particular, he suggested that it should be sufficient for the respondent to submit a document that sets forth those paragraphs of the administrative complaint that are admitted, denied, or as to which the respondent is without knowledge, along the lines allowed by Florida Rule of Civil Procedure 1.110(c). The 2005 bill would have revised section 120.54(5)4. to make clear that the Administration Commission may establish less-detailed pleading requirements for persons requesting hearings in response to agency enforcement or disciplinary cases brought by an agency. The Governor interpreted this provision as exempting actions relating to agency enforcement and disciplinary actions altogether from any pleading requirements, and he objected because he thought it was important for petitions in such cases to contain certain basic information, including whether there are disputed issues of material fact. Section 3 of the bill addresses this objection by creating a new subparagraph 5 of section 120.54(5)(b) that requires the Uniform Rules to establish specific pleading requirements for a request for administrative hearing filed by a respondent in agency enforcement and disciplinary actions.<sup>9</sup> Notably, the agency may provide for an election-of-rights form for the respondent's use in requesting a hearing, so long as any form provided by the agency calls for the information set out in the statute, and does not impose any additional requirements on a respondent in order to request a hearing, unless such requirements are specifically authorized by law.

**Provides Clear "Point of Entry" for Declaratory Statements.** Section 3 of the bill also revises section 120.54(5)(b)6. to require the Uniform Rules regarding petitions for declaratory statement to require these rules to describe the contents of the notices

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- J. Andrew Bertron, Jr. (andy@hueylaw.com) ..... **Chair-elect**
- Elizabeth W. McArthur, Tallahassee (emcarthur@radeylaw.com) .. **Secretary/Editor**
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that must be published in the *Florida Administrative Weekly*, including any applicable time limit for the filing of petitions for leave to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.<sup>10</sup>

**Clarifies Agency Obligation to Rule on Exceptions.** In 2003, the Legislature eliminated the need to rule on exceptions that do not clearly identify the disputed portions of the recommended order, that do not identify the legal basis for the exception, or that do not include specific citations to the record. This legislative change was designed to address those court decisions that had applied a model rule of procedure to require the agency to explicitly rule on each exception, including exceptions that were subordinate, cumulative, immaterial, or unnecessary.<sup>11</sup> However, the APA contains no express requirement that the agency explicitly rule on each exception, and the cited model rule has now been repealed. Section 6 of the bill revises section 120.57(1)(k) to expressly include this requirement to rule on each exception – except, of course, those expressly excluded in 2003.<sup>12</sup>

**Requires Agencies and DOAH to Identify Types of Disputes Amenable to Summary Hearings.** One of the frequently-heard complaints about the APA is that it has become too complex or complicated for resolving the “garden variety” dispute. Another complaint is that the administrative hearing process has become too time-consuming and expensive. In 1996, the Legislature amended the APA to establish the summary hearing process, which is now codified in section 120.574. The summary hearing process is designed to facilitate a more rapid and less complex resolution of disputes and, in particular, to streamline the hearing process where discovery is not required. It appears the process has been little used, no doubt because it requires the agency to agree that the ALJ (rather than the agency) will issue the final order. It has been suggested that the Legislature should *require* that certain types of cases be conducted pursuant to the summary hearing process. In an effort to identify those cases, sections 8 and 9 of the bill

amend the APA to require each agency and DOAH annually to identify the types of disputes in which the agency is involved that would be amenable to the summary hearing process.<sup>13</sup>

**Requires DOAH to Provide Report on Filing of Final Orders.** In those cases where DOAH conducts the final hearing, the APA requires the agency to provide a copy of its final order to DOAH within 15 days after the order is filed with the agency clerk. DOAH then posts the final order on its website as part of the docket for that case. As of the 2005 legislative session, not all agencies had timely complied with this filing requirement. To encourage timely filing, the 2005 bill would have revised section 120.57(1)(m) to make the final order in such cases effective only upon filing with DOAH. This provision proved controversial, so it was not included in the 2006 bill. Instead, section 8 of the bill revises section 120.65(10)(d) to require DOAH in its annual report to the Administration Commission to include a report regarding each agency’s compliance with the filing requirements.<sup>14</sup>

**Clarifies What “Notice” Must Be Published Following the Final Public Hearing on the Proposed Rule.** Section 120.54(3)(d)1. requires an agency to file and publish certain notices after the final public hearing on the proposed rule, depending on whether the rule has been changed from the rule as previously filed with the Joint Administrative Procedures Committee. If the rule has not been changed or contains only technical changes, the adopting agency must file a notice to that effect with the committee at least seven days prior to filing the rule for adoption. On the other hand, if a change other than a technical change is made in a proposed rule, the adopting agency must provide a copy of the notice “of change” to certain persons and must file the notice with the committee, along with the reasons for such change, at least 21 days prior to filing the rule for adoption. The adopting agency also is required to publish “the notice” in the *Florida Administrative Weekly* at least 21 days prior to filing the rule for adoption. Unfortunately, it is not altogether clear

whether *only* the notice of change must be published in the *Weekly*, or whether the agency *also* must publish notice that there has been no change. Section 3 of the 2006 bill revises this paragraph to clarify that only the notice “of change” must be published.

**Clarifies Who is a “Small Business Party” Under FEAJA.** Although not located within the APA itself, the Florida Equal Access to Justice Act authorizes an award of attorney’s fees and costs to a prevailing “small business party” in any adjudicatory proceeding or administrative proceeding pursuant to chapter 120 initiated by a state agency, unless the actions of the agency were substantially justified or special circumstances exist that would make the award unjust.<sup>15</sup> The appellate courts had split on whether an individual is a “small business party” eligible for attorney’s fees under section 57.111,<sup>16</sup> and the Florida Supreme Court held that it is not.<sup>17</sup> The 2005 bill sought to correct this, but the Governor’s veto message expressed concern that this new provision “could generate unwarranted litigation that consumes limited legal, programmatic and fiscal resources, regardless of whether an agency’s actions were substantially justified.” The 2006 bill addresses this objection by revising the definition of “small business party” to simply fix the problem created by the Florida Supreme Court’s decision. In particular, section 2 of the bill revises section 57.111(3)(d) to make clear that a small business party includes an “individual whose net worth does not exceed \$2 million at the time the action is initiated by a state agency when the action is brought against that individual’s license to engage in the practice or operation of a business, profession, or trade.”<sup>18</sup> Like the 2005 bill, the 2006 legislation makes no change in the standard for determining whether an agency’s actions were substantially justified.

*Larry Sellers is a partner with Holland & Knight LLP, practicing in the firm’s Tallahassee office. He received his J.D., with honors, from the University of Florida College of Law.*

*continued...*

**2006 AMENDMENTS**

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**Endnotes:**

<sup>1</sup> Letter from Governor Jeb Bush to Secretary of State Glenda Hood (withholding approval of CS/CS/CS/SB 1010) dated June 22, 2005.

<sup>2</sup> CS/CS/CS/SB 1010 (2005). For a summary of the 2005 bill, see Lawrence E. Sellers, Jr., *More APA: The 2005 Amendments*, ELULS Reporter (June 2005).

<sup>3</sup> Ch. 2006-82, §4, Laws of Fla.

<sup>4</sup> *E.g., Machules v. Dep't of Administration*, 523 So. 2d 1132 (Fla. 1988); *Appel v. Florida Dep't of State, Div. of Licensing*, 734 So. 2d 1180 (Fla. 2d DCA 1999); *Cann v. Dep't of Children & Families*, 813 So. 2d 237 (Fla. 2d DCA 2002); *Patz v. Dep't of Health*, 864 So. 2d 79 (Fla. 3d DCA 2003).

<sup>5</sup> Ross Stafford Burnaman, *Equitable Tolling in Florida Administrative Proceedings*, 74 Fla. B.J. 60 (Feb. 2000); John S. Yudin, *Equitable Tolling in Administrative Proceedings: Where is the Authority?*, XXIV *Administrative Law Section Newsletter* 3 (September 2002).

<sup>6</sup> The 2005 bill provided that "The time for

filing shall be extended if the petitioner has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his or her rights, or has asserted his or her rights mistakenly in the wrong forum." CS/CS/CS/SB 1010, §7, amending s. 120.569(2)(c), F.S.

<sup>7</sup> The Governor said this provision was "opened" and "would likely increase litigation and associated costs, and raises the possibility of retroactive remedies imposed years after an action is taken."

<sup>8</sup> *Brookwood Extended Care Center of Homestead, LLP v. Agency for Health Care Administration*, 870 So. 2d 834 (Fla. 3d DCA 2003); see also Samuel J. Morley, *Brookwood Extended Care Center of Homestead, LLP v. Agency for Health Care Administration, Responding to Administrative Complaints (or How Not To)*, XXV *Administrative Law Section Newsletter* 1 (December 2003).

<sup>9</sup> Ch. 2006-82, §3, Laws of Fla. This provision is modeled after the draft proposed changes to the Uniform Rules.

<sup>10</sup> Ch. 2006-82, §3, Laws of Fla.

<sup>11</sup> *E.g., Iturralde v. Dep't of Professional Regulation*, 44 So. 2d 1315 (Fla. 1st DCA 1996). In so holding, the court cited Model Rule 28-5.405(3), which was adopted by the Depart-

ment of Professional Regulation in Rule 21M-18.04. The cited rule expressly required the final order to include an explicit ruling on each exception or proposed finding of fact, as well as a brief statement of grounds for denying the exception or proposed finding of fact.

<sup>12</sup> Ch. 2006-82, §6, Laws of Fla.

<sup>13</sup> Ch. 2006-82, §§8-9, Laws of Fla.

<sup>14</sup> Ch. 2006-82, §8, Laws of Fla.

<sup>15</sup> Section 57.111, F.S. (2004).

<sup>16</sup> *Florida Real Estate Comm'n v. Shealy*, 647 So. 2d 151 (Fla. 1st DCA 1994) (requiring that a licensee hold a professional license in the same capacity in which he practices a profession); *Albert v. Dep't of Health, Board of Dentistry*, 763 So. 2d 1130 (Fla. 4th DCA 1999) (an individual licensee is not automatically disqualified from recovering attorney's fees under FEAJA simply by forming a corporation for her professional practice).

<sup>17</sup> *Daniels v. Dep't of Health*, 898 So. 2d 61 (Fla. 2005). This case involves a petition to review a per curiam affirmation of a DOAH order denying Daniels' amended petition for attorney's fees based on the ALJ's finding that she is an individual, not a "small business party" as defined by Section 57.111(3)(d), F.S. 868 So. 2d 551 (Fla. 3d DCA 2004).

<sup>18</sup> Ch. 2006-82, §2, Laws of Fla.

## APPELLATE CASE NOTES

by Mary F. Smallwood

### Statutory Construction

*Atlantis at Perdido Association, Inc. v. Warner*, 31 Fla. L. Weekly 1827 (Fla. 1<sup>st</sup> DCA, July 6, 2006)

Atlantis at Perdido Association, Inc. and Spanish Key Condominium Association, Inc. (the "Associations") challenged the issuance of a coastal construction control line permit to Warner and others to construct a nine-story condominium project on Perdido Key. The permit would have allowed the project to be constructed 193 feet seaward of the coastal construction control line and 45 feet seaward of the reasonably continuous and uniform line of buildings on either side of the proposed project. The condominium project would replace two existing structures on the site, a one-story duplex and a one-story quadriplex. The Department of Environmental Protection took the position that construction of the new condominium fell within the provisions of section 161.053(13)(a), Fla.

Stat., in that it constituted "rebuilding within the confines of the original foundation of a major structure" or a "more landward relocation or rebuilding of a damaged existing structure if such relocation or rebuilding would not cause further harm to the beach-dune system." At the administrative hearing, the Department's witness testified that construction of a new replacement structure more landward of the prior structure qualified under the statute even if the configuration of the new structure was significantly larger or different.

On appeal, the court reversed. It held that the meaning of the statute was plain on its face that replacement of two small one-story structures with a nine-story condominium was not rebuilding. The court noted that the Department had a rule definition of rebuilding that defined the terms as substantial improvement of an existing structure.

### Appeals

*Mulgado v. Rodriguez*, 31 Fla. L. Weekly 1831 (Fla. 1<sup>st</sup> DCA, July 6, 2006)

The complainant in a matter before the Commission on Ethics appealed a final order of the Commission he believed to be adverse. The court granted the Commission's motion to dismiss the appeal, agreeing that the complainant was not a party to the matter below. The court cited a Commission rule to the effect that only the respondent is a party to the matter before the Commission.

*Mary F. Smallwood is a partner with the firm of Ruden, McClosky, Smith, Schuster & Russell, P.A. in its Tallahassee office. She is a Past Chair of the Administrative Law Section and a Past Chair of the Environmental and Land Use Law Section of The Florida Bar. She practices in the areas of environmental, land use, and administrative law. Comments and questions may be submitted to Mary.Smallwood@Ruden.com.*

# Agency Snapshot:

## *Department of Elder Affairs*

Constitutionally designated by Florida voters in 1988 to “serve as the primary state agency” for administering human services programs for the elderly, the Department of Elder Affairs was legislatively created in 1991 to serve Florida’s elders by helping them maintain self-sufficiency and self-determination. With more than 23 percent of Florida’s population over age 60, and that number likely to increase dramatically in the next 5 years, Florida’s future is linked to the well-being of its elder population.

In furtherance of its mission, the Department of Elder Affairs partners with public and private organizations and agencies to combat ageism, create public awareness, and advocate on behalf of elders and their needs. The Department also acts as a clearinghouse for Florida’s elders and their families seeking information and assistance on issues particular to this population, such as determining the need and appropriate level for long term care.

With most of its programs privatized, the Department of Elder Affairs is one of the smallest state executive agencies, with approximately 360 employees. The DOEA programs are largely administered through 11 Area Agencies on Aging (AAA) and 52 Community Care for the Elderly (CCE) lead agencies. The primary goal of these agencies is volunteerism on the local level to ensure assistance to the elderly.

**Contact Information:** Department of Elder Affairs

4040 Esplanade Way  
Tallahassee, FL 32399-7000  
Phone: (850) 414-2000  
Fax: (850) 414-2004  
Information@elderaffairs.org

**Hours of Operation:** 8:00 a.m. to 5:00 p.m.

**Agency Secretary:** Carole Green  
A former legislator representing parts of Lee and Collier counties, Secretary Green has 30 years of experience in health care and public ser-

vice. She was appointed by Governor Jeb Bush in March 2005, after having previously served as the Director of the Office of Long-term Care Policy.

**Deputy Secretary:** Ashley Stacell

Also appointed in March 2005, Deputy Secretary Stacell oversees the administrative functions of the Department and also has responsibility for two important Department programs: the Long Term Care Ombudsman Program and SHINE (Serving Health Insurance Needs of Elders).

**General Counsel:** Barbara Crosier

Ms. Crosier is responsible for the legal work of the Department, much of which is related to the contracts that the Department enters into with its statewide agency partners in providing services to Florida’s elders. The General Counsel’s office also administers two programs, the Statewide Public Guardianship Office and the Elder Rights Unit. Ms. Crosier’s office does this with just one full-time and one-part time senior attorney in addition to herself, making hers probably the smallest legal staff of any executive agency.

**Agency Clerk/Public Records Requests:** Demetria Ross

In addition to filing Department documents, the Agency Clerk also is responsible for the logging and tracking of public records requests.

**Communications Director:** Amy Lynch

Ms. Lynch has just taken over this position, which is responsible for overseeing the distribution of information about the Department and educating the public about its programs and services. She can be reached at [lyncha@elderaffairs.org](mailto:lyncha@elderaffairs.org).

**APA Interaction:** The legal work of the Department of Elder Affairs is largely overseeing and administering contracts that channel federal and state dollars to Area Agencies on Aging in 11 districts around the state. The Department does not assist individual elders with legal matters. Therefore, there is little interaction with the Administrative Procedure Act. The Department is currently in litigation over whether the Area Agencies on Aging are subject to the APA for competitive procurement purposes. The Department is taking the position that Area Agencies on Aging are not “agencies” subject to the APA for any purpose, including for competitive procurement.

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# Meet the DOAH Administrative Law Judges

Compiled by Director and Chief Judge Robert S. Cohen and Administrative Law Judge Linda M. Rigot (Part I of II)

One of the benefits of membership in the Administrative Law Section is the opportunity to get to know the Administrative Law Judges before whom we practice in a variety of contexts—at Section events, in seminars, and here, in print, in the Newsletter. Please take this opportunity to share your Newsletter with non-members and encourage them to join the Section!

Most of the DOAH ALJs are primarily assigned cases by geographic area for easier scheduling and travel. Some are assigned cases on a state-wide basis in a specialized subject matter. The first part of this article gives brief biographical sketches of the Chief Judge, the Deputy Chief Judge, and the ALJs who hear cases in the northern and middle districts of Florida. Part II, which will appear in the next newsletter issue, will feature the ALJs who hear cases in the southern district and those who specialize in hearing environmental and health care cases.

The Northern District starts at Escambia County on the west, encompassing the entire panhandle across to Nassau County and goes as far south as Hernando, Sumter, Lake, and Volusia Counties. The Middle District starts at Pasco, Polk, Orange, and Seminole Counties, includes Brevard County, and runs down the middle and western portions of the state, ending with Collier County.

## Chief Judge/Director of DOAH

**Name:** ROBERT S. COHEN

**Colleges, Degrees, and Years:**

B.A. *cum laude*, Brandeis University (1979); J.D., Florida State University (1981)

**Year Admitted to The Bar:** 1982

**Year Employed at DOAH:** 2003

**Prior Professional Experience:**

Shareholder, Robert S. Cohen, P.A. (1997-2003); Managing Shareholder, Pennington, et al. (1993-1997); Shareholder, Associate, Haben, et al. (1983-1993); Associate, McFarlain, et al. (1980-1983)

## **Relevant Professional Activities:**

Member, Administrative Law, Health Law, Workers' Compensation, and Government Lawyers Sections, The Florida Bar; President's Pro Bono Service Award, Second Judicial Circuit (2004); Florida Government Bar Association; William H. Stafford Inn of Court (Master, 2004-Present); Tallahassee Bar Association (President, 1997-1998; Board of Directors 1995-2002); Legal Aid Foundation (President, 2001-2002; Treasurer, 2000-2001; Board of Directors, 1999-Present); Tallahassee Women Lawyers Association; Member, Administrative Law Section, National Conference of Administrative Law Judges, American Bar Association; National Association of Administrative Law Judges; Second Judicial Circuit Bench/Bar Committee (2003-Present); Federal Alliance for Safe Homes Steering Committee (2000-2003); Residential Community Mitigation Program Advisory Committee, Department of Community Affairs (2000-2001); Property Tax Administration Task Force, Florida Department of Revenue (2002-2003)

## Deputy Chief Judge

**Name:** HARRY L. HOOPER

**Colleges, Degrees, and Years:**

B.S., Auburn University (1965); Master in Public Administration, Florida State University (1994); J.D. *cum laude*, Mercer University (1973)

**Year Admitted to The Bar:**

Alabama (1973); Georgia (1974); Florida (1986)

**Year Employed at DOAH:** 2001

**Prior Professional Experience:**

General Counsel, Florida Department of Banking and Finance (1995-2000); Assistant Director and Counsel, Division of Insurance Fraud (1991-1995); Director, Division of Alcohol and Tobacco (1990-1991); Assistant General Counsel, Department of Business Regulation (1988-1990); Assistant State Attorney, 20th Judicial Circuit (1986-1987); Judge Advocate and Military Judge, U. S. Marine

Corps (1970-1986); Artillery Officer, U. S. Marine Corps (1965-1970).

## **Relevant Professional Activities:**

Member, Tallahassee Bar Association; Member, Jefferson County Bar Association; Vice-President, Florida Government Bar Association; Member, Administrative Law Section, The Florida Bar; *pro bono* attorney, North Florida Legal Services; Florida International Volunteer Corps (advisor to the governments of Guyana and the Dominican Republic).

## Northern District

**Name:** CHARLES C. ADAMS

**Colleges, Degrees, and Years:**

B.A., Florida State University (1964); J.D., University of Florida (1969)

**Year Admitted to The Bar:** 1970

**Year Employed at DOAH:** 1975

**Prior Professional Experience:**

Partner, Powers, Folsom, Adams and Smith, P.A., in Jacksonville (1974-75); Assistant Public Defender, Duval County (1973); Assistant County Solicitor, Palm Beach County (1970-72); Associate, Parish and Parish, in West Palm Beach (1970)

**Relevant Professional Activities:**

Member, Health Law Section, The Florida Bar; Lecturer, The Florida Bar CLE Courses

**Name:** DIANE CLEAVINGER

**Colleges, Degrees, and Years:**

B.S. *cum laude*, Indiana State University (1978); J.D. with high honors, Florida State University (1981)

**Year Admitted to The Bar:** 1981

**Year Employed at DOAH:** 1988

**Prior Professional Experience:**

Partner, Fitzpatrick and Barron, in Panama City (1985-88); Partner, Hilton and Cleavinger, in Panama City (1981-85)

**Name:** DON W. DAVIS

**Colleges, Degrees, and Years:**

B.S., University of Florida (1965); J.D., Florida State University (1969)

**Year Admitted to The Bar:** 1970

**Year Employed at DOAH: 1987****Prior Professional Experience:**

General Counsel, Florida Game and Fresh Water Fish Commission (1987); General Counsel, Florida Department of Commerce (1978-87); Assistant State Attorney, Seminole County (1977-78); County Judge and Acting Circuit Judge, Madison County (1971-77); Assistant General Counsel, Office of State Comptroller (1970-71)

**Relevant Professional Activities:**

Member, Administrative Law Section, The Florida Bar; Member, Tallahassee Bar Association; Honorary member, American Trial Lawyers Association

**Name: ELLA JANE P. DAVIS****Colleges, Degrees, and Years:**

B.A.Ed., University of Maryland (1967); J.D., Florida State University (1970)

**Year Admitted to The Bar: 1970****Year Employed at DOAH: 1984****Prior Professional Experience:**

Attorney, Florida Department of Transportation (1978-84); Author, West's Florida Practice series: *Davis, Florida Workers' Compensation* (Vols. 6-8) c.1982; Sole practitioner, in Tallahassee (1975-78); Attorney-Editor, Florida Industrial Relations Commission (1972-74); Partner, Dansby, Davis and Davis, in Tallahassee (1970-72)

**Relevant Professional Activities:**

Member, Administrative Law and Workers' Compensation Sections, The Florida Bar; Tallahassee Bar Association; Certified County and Circuit Court Mediator; Past member, Second Circuit Grievance Committee; Past Executive Council member and CLE Chair, Workers' Compensation Section, The Florida Bar; Past member, The Florida Bar Professionalism and CLE Committees and the Journal/News Board; Former Visiting Instructor, Florida State University College of Law; Author and instructor for various CLE courses; Florida's first female legislative staff intern.

**Name: SUZANNE F. HOOD****Colleges, Degrees, And Years:**

B.A., Stetson University (1966); J.D. with honors, Florida State University (1987)

**Year Admitted to The Bar: 1987****Year Employed at DOAH: 1994****Prior Professional Experience:**

Associate, Law Offices of Hilliard R. Reddick, in Quincy (1992-94); Judicial Clerk, Supreme Court of Florida (1990-92); Senior Attorney, Florida Department of Insurance (1988-90); Judicial Clerk, First District Court of Appeal of Florida (1987-88); Teacher, public and private school systems in Florida and Georgia (twelve years' experience between 1966 and 1983)

**Relevant Professional Activities:**

Member, Administrative Law Section, The Florida Bar; Member, Tallahassee Bar Association

**Name: LISA ("LI") SHEARER NELSON****Colleges, Degrees, And Years:**

B.A., Carson-Newman College (1980); J.D., Florida State University (1983)

**Year Admitted To The Bar: 1983****Year Employed at DOAH: 2006****Prior Professional Experience:**

Director, Holtzman Equels, P.A. (2001-2006); Associate, Holtzman, Krinzman, Equels and Furia (1999-2001); Deputy General Counsel, Department of Business and Professional Regulation (1993-1999); Appellate counsel, Department of Professional Regulation (1986-1993); Law Clerk to Chief Justices James E. Alderman and Joseph A. Boyd, Jr., Florida Supreme Court (1983-86).

**Relevant Professional Activities:**

Past Chair and current Executive Council member, Administrative Law Section, The Florida Bar; Member, Health Law and Appellate Practice Sections, The Florida Bar; Member, Florida Government Bar Association; Lecturer, The Florida Bar CLE courses; Author, Administrative Law Section *Newsletter* articles

**Name: P. MICHAEL RUFF****Colleges, Degrees, and Years:**

B.A., Florida State University (1968); J.D., Florida State University (1971)

**Year Admitted to The Bar: 1971****Year Employed at DOAH: 1980****Prior Professional Experience:**

Senior Hearing Examiner, Florida Public Service Commission (1976-80); Associate, Woods and Johnston, in Tallahassee (1973-75); Legislative

Aide, Florida Senate (1969-70)

**Relevant Professional Activities:**

Former Executive Council member, Administrative Law Section, The Florida Bar; Member, Environmental and Land Use Law Section, The Florida Bar; Past Director, past officer, and current member, Tallahassee Bar Association; Lecturer, The Florida Bar CLE courses; Attended Harvard Law School course in Mediation/Negotiation (1988); Member, Second Judicial Circuit Professionalism Committee; Volunteer judge, Florida State University College of Law Moot Court

**Name: BARBARA J. STAROS****Colleges, Degrees, and Years:**

B.A., Eckerd College (1974); J.D., University of Florida (1977)

**Year Admitted to The Bar: 1978****Year Employed at DOAH: 2000****Prior Professional Experience:**

Of Counsel, Pennington, Moore, Wilkinson, Bell and Dunbar, P.A., and Cobb, Cole and Bell (1996-2000); General Counsel, Florida Department of Education (1993-1996); Deputy General Counsel, Florida Department of Education (1986-1993); Assistant Attorney General, Department of Legal Affairs (1979-1986); Staff Attorney, Joint Legislative Management Committee (1978-1979).

**Relevant Professional Activities:**

Member, Administrative Law and Government Lawyers Sections, The Florida Bar; Member, Tallahassee Women Lawyers; Author, *Stetson Law Review*; Contributing author: *Florida Association of School Administrators' Florida Education Handbook*; Lecturer, Lorman Education Services CLE courses; Lecturer, Florida Law-Related Education Association Summer Law Institute on School Law; Lecturer, Institute for Small and Rural School Districts Legal Issues Workshop.

**Middle District****Name: BRAM D. E. CANTER****Colleges, Degrees, and Years:**

B.A. with high honors, University of South Florida (1974); J.D., University of Florida (1977); LL.M. with

*continued...*

**DOAH***from page 7*

highest honors, George Washington University (1981)

**Year Admitted to The Bar:** 1978

**Year Employed at DOAH:** 2005

**Prior Professional Experience:**

Solo Practice (1997-2005); Shareholder, Pennington Law Firm, in Tallahassee (1993-1996); Shareholder, Haben and Culpepper, in Tallahassee (1986-1993); Associate, Gunster, Yoakley, Criser & Stewart, in W. Palm Beach (1984-1986); Assistant General Counsel, Department of Environmental Regulation (1981-84); Director, Water Law Center, University of Florida College of Law (1977-79)

**Relevant Professional Activities:**

Member, Environmental Law and Administrative Law Sections; Co-Author, Florida Water Law 1980, *Florida Water Atlas*; CLE lecturer in water law and environmental law.

**Name:** JEFF B. CLARK

**Colleges, Degrees, and Years:**

B.A., Florida State University (1962); J.D., University of Tennessee (1968)

**Year Admitted to The Bar:** 1969

**Year Employed at DOAH:** 2000

**Prior Professional Experience:**

Attorney, Gurney, Gurney and Handley, in Orlando (1969-77); Solo practice, in Orlando (1978-2000); Municipal Judge, City of Orlando (1972-1975); City Commissioner, City of Orlando (1980-1992); Colonel, United States Marine Corps (retired)

**Relevant Professional Activities:**

Member, Orange County and American Bar Associations

**Name:** SUSAN B. HARRELL

**Colleges, Degrees, and Years:** B.A. *summa cum laude*, Florida State University (1974); J.D. *cum laude*, Florida State University (1978)

**Year Admitted to The Bar:** 1979

**Year Employed at DOAH:** 1993

**Prior Professional Experience:**

General Counsel, Florida Department of Management Services (formerly, Department of General Services) (1985-93); Attorney, Department of General Services (1982-85); Assistant General Counsel, Department of Health and Rehabilitative Services (1980-82); Associ-

ate, Field, Granger, Santry and Mitchell, in Tallahassee (1979-80)

**Relevant Professional Activities:**

Member, Administrative Law and Government Lawyer Sections, The Florida Bar; Member, Tallahassee Bar Association; Past Chair, Association of General Counsels

**Name:** CAROLYN S. HOLIFIELD

**Colleges, Degrees, and Years:** B.A., University of South Florida (1971); M.A., University of South Florida (1976); J.D., Florida State University (1984)

**Year Admitted to The Bar:** 1985

**Year Employed at DOAH:** 1995

**Prior Professional Experience:**

Assistant General Counsel, Department of Education (1987-91, 1993-95); Chief, Administrative Law Section, Department of Transportation (1991-93); Adjunct Professor, Florida A. & M. University (1991-95); Adjunct Professor, Nova University (1987-91); Staff Attorney, Leon County School District (1985-87); Counselor/Advisor, University of South Florida (1979-81); Teacher, Guidance Counselor, Hillsborough County School District (1971-79)

**Relevant Professional Activities:**

Member, Administrative Law Section, The Florida Bar

**Name:** DANIEL M. KILBRIDE

**Colleges, Degrees, and Years:**

B.A., Stetson University (1965); J.D., Stetson University (1974)

**Year Admitted to The Bar:** 1974

**Year Employed at DOAH:** 1989

**Prior Professional Experience:**

County Judge and Acting Circuit Judge, Indian River County (1985-89); City Attorney, City of Sebastian (1977-84); City Attorney, City of Fellsmere (1979-84); Private practice, in Vero Beach (1977-84); Assistant City Attorney and City Prosecutor, City of Vero Beach (1974-77); Special Agent (Captain), Office of Special Investigations, United States Air Force (1967-71)

**Relevant Professional Activities:**

Member, Administrative Law and Government Lawyers Sections, The Florida Bar; Member, National Association of Administrative Law Judges; Distinguished Leadership

Award, Conference of County Judges of Florida (1987, 1988)

**Name:** DANIEL MANRY

**Colleges, Degrees, and Years:**

B.S., University of Florida (1968); J.D., University of Florida (1971); M.L.T., Georgetown University (1983)

**Year Admitted to The Bar:**

Florida (1971); Colorado (1977); District of Columbia (1985)

**Year Employed at DOAH:** 1989

**Prior Professional Experience:**

Assistant Attorney General, Florida Department of Legal Affairs (1988-89); Bureau Chief, Florida Department of Revenue, Bureau of Technical Assistance (1986-88); Legal Editor, *Tax Management Portfolios*, Bureau of National Affairs (1986); Associate, Holland and Knight, in Tampa (1984-85); Associate, Aronow, Anderson, Beaty and Lee, in Denver (1984); Associate, Silverstein and Mullens, in Washington, D.C. (1983); President, Manry Realty (1976-82); Daniel Manry, P.A., in Denver and Breckenridge (1973-82); Assistant Public Defender, Lee County, Florida (1972-73); Reginald Heber Smith Community Lawyer Fellowship, Howard University, Assigned to Camden Regional Legal Services, Camden, N.J. (1971-72)

**Relevant Professional Activities:**

Author, *Florida Administrative Practice Manual*, Department of Revenue; *The Scarecrow in McDonald's Farm: A Fairy Tale About Administrative Law*, *The Florida Bar Journal* (March 1999).

**Name:** R. BRUCE MCKIBBEN, JR.

**Colleges, Degrees, and Years:**

A.A., Brevard Community College (1978); B.A., Florida State University (1980); J.D., Florida State University (1984)

**Year Admitted to The Bar:** 1984

**Year Employed at DOAH:** 2006

**PRIOR PROFESSIONAL EXPERIENCE:**

Ronald A. Mowrey, P.A. (1984); Department of Health and Rehabilitative Services (1985-86); Dempsey and Goldsmith, P.A. (1987-90); Haben and Culpepper, P.A. (1990-94); Holland and Knight, LLP (1994-98); R. Bruce McKibben, P.A. (1998-2006)

*Continued, page 12*

## Section Budget/Financial Operations

	2005-2006 Budget	2005-2006 Actual	2006-2007 Budget
<b>REVENUE</b>			
Dues	28,125	27,113	28,125
Affiliate Dues	125	50	125
Dues Retained by Bar	(14,163)	(13,710)	(19,788)
Administrative Fee Adjustment	0	0	650
Online CLE	0	112	0
CLE Courses	1,000	87	5,000
Audiotape Sales	2,000	6,558	0
Course Material Sales	75	9	5
Section Service Programs	2,000	1,975	2,000
Credit Card Fees	0	(9)	0
Interest	9,000	10,047	10,004
Miscellaneous	100	0	150
<b>TOTAL REVENUE</b>	<b>28,262</b>	<b>32,232</b>	<b>26,271</b>
<b>EXPENSE</b>			
Staff Travel	1,147	392	1,190
Postage	150	57	200
Printing	50	110	2,700
Officer Expense	500	0	500
Newsletter	2,500	2,184	2,500
Membership	500	0	500
Supplies	50	0	50
Photocopying	150	140	150
Officer Travel	2,500	900	2,500
Meeting Travel	500	446	3,000
CLE Speaker Expense	100	0	100
Committees	500	0	500
Council Meetings	500	313	600
Bar Annual Meeting	1,700	1,889	1,700
Section Service Programs	5,000	1,901	5,000
Retreat	4,500	1,083	4,500
Public Utilities	500	0	500
Awards	500	511	600
Writing Contest/Law School Liaison	2,400	0	4,900
Website	6,000	1,160	6,000
Legislative Consultant	10,000	0	5,000
Council of Sections	300	300	300
Misc.	500	0	500
Operating Reserve	2,955	0	4,506
TFB Support Services	0	0	1,575
<b>TOTAL EXPENSE</b>	<b>43,502</b>	<b>11,386</b>	<b>49,571</b>
<b>BEGINNING FUND BALANCE</b>	<b>128,577</b>	<b>153,803</b>	<b>142,919</b>
<b>PLUS REVENUE</b>	<b>28,262</b>	<b>32,232</b>	<b>26,271</b>
<b>LESS EXPENSE</b>	<b>(43,502)</b>	<b>(11,386)</b>	<b>(49,571)</b>
<b>OTHER COST CENTER</b>	<b>671</b>	<b>(293)</b>	<b>(5,605)</b>
<b>ENDING FUND BALANCE</b>	<b>114,008</b>	<b>174,356</b>	<b>114,014</b>

### SECTION REIMBERSEMENT POLICIES:

**General:** All travel and office expense payments are accordance with Standing Board Policy 5.61. Travel expenses for other than members of Bar staff may be made if in accordance with SBP 5.61(e)(5)(a)-(i) or 5.61(e)(6) which is available from Bar headquarters upon request.

The Florida Bar Administrative Law Section presents the  
**2006 Pat Dore Administrative Law Conference**

COURSE CLASSIFICATION: INTERMEDIATE LEVEL



**One Location**  
**October 19-20, 2006**  
**Center for Professional Development**  
**Augustus B. Turnbull III Conference Center**  
**555 W. Pensacola Street**  
**Tallahassee, FL**

**Course No. 0480R**

**Thursday, October 19**

1:00 p.m. – 1:30 p.m.

**Late Registration**

1:30 p.m. – 1:40 p.m.

**Welcome**

*Patrick L. "Booter" Imhof, Administrative Law Section Chair*

1:40 p.m. – 2:30 p.m.

**Variations and Waivers**

*Francine M. Ffolkes, Department of Environmental Protection*

2:30 p.m. – 3:20 p.m.

**Dark Side of the Moon: A Survey of Bankruptcy Process and Issues Affecting Regulatory Agencies**

*Eric H. Miller, Agency for Health Care Administration*

3:20 p.m. – 3:35 p.m.

**Break**

3:35 p.m. – 4:25 p.m.

**Attorneys Fees in APA Cases**

*Seann M. Frazier, Greenberg Traurig P.A.*

4:25 p.m. – 5:00 p.m.

**Florida e-Rulemaking**

*Vicky McIntosh, Department of State*  
*Abbie Koon, Department of State*

5:00 p.m. – 6:30 p.m.

**Reception Honoring Judges**

**Friday, October 20**

8:30 a.m. – 9:20 a.m.

**The 1996 Amendments to the APA: A Ten Year Retrospective**

*William E. Williams, Huey, Guilday, Tucker, Schwartz & Williams, P.A.*

9:20 a.m. – 10:00 a.m.

**Administrative Law Case Update**

*Mary F. Smallwood, Ruden McClosky Smith Schuster & Russell P.A.*

10:00 a.m. – 10:15 a.m.

**Break**

10:15 a.m. – 11:05 a.m.

**The New (Improved?) Revised Model State Administrative Procedure Act**

*Jim Rossi, FSU College of Law*

11:05 a.m. – 12:00 noon

**Ethics: Case Studies and Discussion**

*Paul A. Remillard, Remillard Law Firm*

12:00 noon – 1:30 p.m.

**Lunch and Keynote Address**

**DOAH: All the Process That's Due and Then Some**

*Hon. Robert S. Cohen, Division of Administrative Hearings*

1:30 p.m. – 2:20 p.m.

**The Top Ten Cases Since the 1996 Amendments to the APA**

*Hon. T. Kent Wetherell, Division of Administrative Hearings*

2:20 p.m. – 2:30 p.m.

**Break**

2:30 p.m. – 3:00 p.m.

**What is JAPC Up to Now?**

*F. Scott Boyd, Joint Administrative Procedures Committee*

3:00 p.m. – 4:00 p.m.

**Rulemaking, Then and Now**

*Moderator: M. Catherine Lannon, Office of the Attorney General*

*B. Jack Chisolm, Jr., Department of Environmental Protection*

*Lawrence E. Sellers, Jr., Holland & Knight LLP*  
*Josefina Tamayo, Department of Business and Professional Regulation*

**Refund Policy**

Requests for refund or credit toward the purchase of the course books of this program **must be in writing and postmarked** no later than two business days following the course presentation. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. A \$25 service fee applies to refund requests. Registrants who do not notify The Florida Bar by 5:00 p.m., October 12, 2006, that they will be unable to attend the seminar, will have an additional \$50 retained. Persons attending under the policy of fee waivers will be required to pay \$50.

**CLE CREDITS**

**CLER PROGRAM**

(Max. Credit: 11.0 hours)

General: 11.0 hours

Ethics: 1.0 hour

**CERTIFICATION PROGRAM**

(Max. Credit: 8.5 hours)

Business Litigation: 8.5 hours

City, County & Local Government: 8.5 hours

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, for more information about the CLER and Certification Requirements.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News) you will be sent a Reporting Affidavit or a Notice of Compliance. The Reporting Affidavit must be returned by your CLER reporting date. The Notice of Compliance confirms your completion of the requirement according to Bar records and therefore does not need to be returned. You are encouraged to maintain records of your CLE hours.

# Registration

## Register me for “2006 Pat Dore Administrative Law Conference”

**(053) (CENTER FOR PROFESSIONAL DEVELOPMENT, TALLAHASSEE) (OCTOBER 19-20, 2006)**

TO REGISTER OR ORDER AUDIO/CD OR COURSE BOOKS, MAIL THIS FORM TO: The Florida Bar, Attn. CLE Programs, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON-SITE REGISTRATION, ADD \$25.00. **On-site registration is by check only.**

Name \_\_\_\_\_ Florida Bar # \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_ Phone # \_\_\_\_\_

**JMW: Course No. 0480R**

**REGISTRATION FEE (check one):**

- Member of the Administrative Law Section: \$100
- Non-section member: \$125 (includes Section Membership)
- Full-time law college faculty or full-time law student: \$50
- Persons attending under the policy of fee waivers: \$50

*Includes Supreme Court, DCA, Circuit and County Judges, Magistrates, Judges of Compensation Claims, Administrative Law Judges, and full-time legal aid attorneys if directly related to their client practice. (We reserve the right to verify employment.)*

**METHOD OF PAYMENT (check one):**

- Check enclosed made payable to The Florida Bar
- Credit Card (Advance registration only. May be faxed to 850/561-5816)
  - MASTERCARD     VISA    Exp. Date \_\_\_\_/\_\_\_\_(MO/YR.)

Signature: \_\_\_\_\_

Name on Card: \_\_\_\_\_

Card No. \_\_\_\_\_



Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

**COURSE BOOK – AUDIOTapes/cd – ON-LINE – PUBLICATIONS**

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 10/19/06. TO ORDER AUDIOTAPES/CD OR COURSE BOOKS**, fill out the order form above, including a street address for delivery. **Please add sales tax to the price of tapes or books. Tax exempt entities must pay the non-section member price.**

<input type="checkbox"/> <b>COURSE BOOK ONLY</b> Cost \$30 plus tax (Certification/CLER credit is not awarded for the purchase of the course book only.)  <p style="text-align: center;"><b>TOTAL \$ _____</b></p>	<input type="checkbox"/> <b>AUDIOTAPES</b> (includes course book) \$105 plus tax (section member) \$120 plus tax (non-section member)  <p style="text-align: center;"><b>TOTAL \$ _____</b></p>	<input type="checkbox"/> <b>AUDIO CD</b> (includes course book) \$125 plus tax (section member) \$150 plus tax (non-section member)  <p style="text-align: center;"><b>TOTAL \$ _____</b></p>
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**DOAH**  
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**Relevant Professional Activities:**

Affiliation with Florida Health Care Association and American Health Lawyers Association; Special Counsel to Academy of Florida Elder Law Attorneys; Speaker, The Florida Bar CLE courses; Member, Tallahassee Bar Association; Member, Administrative Law and Health Law Sections, The Florida Bar; Recipient of Ann Bowden Award— Child Advocate of the Year

**Name: WILLIAM F. QUATTLE-BAUM**  
**Colleges, Degrees, and Years:**

B.S. with high honors, University of Florida (1975); J.D., University of Florida (1978)

**Year Admitted to The Bar: 1979**

**Year Employed at DOAH: 1987**

**Prior Professional Experience:**

Assistant Director, Florida Small Business Health Access Project (1987); Deputy Campaign Manager and Communications Director, Bob Graham for U.S. Senate (1986); Senior Executive Assistant, Florida Department of Banking and Finance (1984-86); Attorney, Florida House of Representatives (1980-84); Press Secretary, U.S. Senator Richard Stone Campaign (1980); Attorney, Florida Department of Insurance (1979-80)

**Name: LAWRENCE P. STEVENSON**

**Colleges, Degrees, And Years:**

B.A., Florida State University (1983); J.D. with honors, University of Florida (1987)

**Year Admitted to The Bar: 1987**

**Year Employed at DOAH: 1997**

**Prior Professional Experience:**

Partner, Holland and Knight, in Tallahassee (1995-97); Associate, Holland and Knight, in Tallahassee (1987-94).

**Relevant Professional Activities:**

Member, Administrative Law Section, The Florida Bar; Member, Tallahassee Bar Association.



**The Florida Bar**  
**651 E. Jefferson St.**  
**Tallahassee, FL 32399-2300**

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