



The Voice

of The Florida Bar Government Lawyer Section

Word From the Chair

By Mary Ellen Clark, Chair, Government Lawyer Section, 2010-2011



CLARK

There is no doubt that these are interesting and challenging times to be a government lawyer. You don't need to be in Tallahassee right now to experience first hand the lesson of change – that it is never-ending. Whether you work for an agency responsible for the regulation of business or the environment, or for the provision of services to those in need, you are certain to work closely with agency rules and be experiencing the effects of Governor Scott's Executive Order 11-01 (entered within hours of his inauguration) and his goal to suspend all rulemaking. While there is plenty of discouraging news out there, like the seeming daily filing of bills directed at reducing government pensions or benefits, or my research that reveals that in 2008, the national average of government lawyer salaries was \$78,540, while in Florida it was dropping from a high in 2007 of \$65,000, back down to \$60,000, in 2009, still there is reason to be proud and excited about a career in public service. We, as government lawyers, have tremendous opportunities to have a positive impact in our communities and do the work that makes a difference. Whatever the rally of the moment in the capitol, hard work and strong ethics are values that never lose their import. As long as there is government, there must be talented and experienced government lawyers

to ensure government actions are taken according to the laws passed by the people the government serves. I know I've never heard the private bar wish for the day that government reduces the ranks of its good lawyers. The private bar needs good government lawyers with whom to work to best represent their clients. It's a new year, a new administration, and a new round of change, but the rewards of public service remain strong for those who are committed.

Within the Executive Council, we are committed to keeping abreast of the changes and the needs of our members. Last fall, we established a new legislative position to "oppose all efforts to reduce the salaries and currently authorized benefits, including any change to the Florida Re-

tirement System that would result in reduced benefits, for government lawyers." The Board of Governors reviewed our new position in December and supported our members with the approval of new position of its own to support "language in the Legislative Appropriations Act to permit the payment of government attorneys' Florida Bar membership fees and continuing legal education costs from funds within budget entities." Further, the BOG adopted a position to support "amendment of FS § 119.071 revising the exemption from the attorney's work product of a public agency; and supports amendment of FS § 286.011 revising the criteria for the attorney-client sessions of a public agency." These and

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THE GOVERNMENT LAWYER
SECTION REPORTER

Diana Bock, Editor

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Mary Ellen Clark, Chair
PL-01, The Capitol
Tallahassee, FL 32399
Phone: 850/414-3300
Fax: 850/922-6425

Email: maryellen.clark@myfloridalegal.com

Ward Griffin, Chair-elect
1214 Maryland Ave. NE
Washington, DC 20002
Phone: 202/418-5425
Email: ufward@hotmail.com

Barbara Wingo, Treasurer
P.O. Box 113125
Gainesville, FL 32611
Email: wingo@ufl.edu

Diana Bock, Secretary
3507 E. Frontage Rd., Ste. 200
Tampa, FL 33607
Phone: 813/287-7900
Email: diana.bock@myfloridalegal.com

Keith Rizzardi, Immediate Past Chair
33091 Gun Club Road #MSC-1410
West Palm Beach, FL 33406
Phone: 561/682-6274
Fax: 561/682-6276
Email: krizzar@sfwmd.gov

Summer Hall, Program Administrator
651 East Jefferson Street
Tallahassee, FL 32399-2300
Phone: 850/561-5650
Email: shall@flabar.org

WORD FROM THE CHAIR

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all positions approved by TFB and the sections can be found at The Florida Bar website under the "Legislative Activity" tab. Bobby Downie and our legislative committee have been very active this year and the Section voted to participate in TFB's Legislative Reception, held January 26th. TFB, through President Downs, President-Elect Hawkins, Executive Director Harkness and General Counsel Hill have all been responsive to our concerns as government lawyers and the unique challenges we face. We look forward to further participation and cooperation with the Board of Govern-

Another big accomplishment this year has been the signing of a contract with Holmes New Media to develop a website for the Section. Warren Pearson has led the team to get this project off the ground and there is already much to see at www.flgovlawyer.org. Please take a look at the new website and share your thoughts about how our membership can work together through these interesting and challenging times!

Mary Ellen Clark is an Assistant Attorney General, practicing in the Administrative Law Bureau of the Attorney General's office for nearly 8 years, and has represented the Boards of Accountancy, Architecture and Interior Design, Electrical Contractors, Employee Leasing Companies, Pilot Commissioners, Podiatric Medicine, Psychology, and the Florida Real Estate Appraisal Board. A native Floridian, Mary Ellen is an A-V rated attorney who graduated with honors from the FSU College of Law and cum laude from Randolph-Macon Woman's College. Prior to joining the AG's office, Mary Ellen was a hearing officer for the Department of Highway Safety and Motor Vehicles and a prosecutor for the Department of Business and Professional Regulation. Mary Ellen is active with The Florida Bar and, in addition to being Chair of the Government Lawyer Section, is a past Executive Council member of the Administrative Law Section, a past member of the Traffic Court Rules Committee, and was recently appointed to the Professional Ethics Committee. She is also a past president of the Florida Government Bar Association and the Tallahassee Women Lawyers.

UPCOMING CLEs

April 8, 2011

State & Federal Government & Administrative Practice (SFGAP) Certification Review Course I: The Sunshine State (#1184R)
Live & Webcast – Tallahassee-Leon County Civic Center
Brochure available on GLS website, www.flgovlawyer.org/cle

June 9, 2011

Practicing Before the Supreme Court (#1211)
Brochure coming soon!

June 23, 2011

Florida and Federal Perspectives on Freedom, Confidentiality and Access to Information (2011 Florida Bar Annual Convention Presidential Showcase)
For registration information, visit www.floridabar.org

State and Federal Government and Administrative Practice (SFGAP) Update

By Francine M. Ffolkes, Florida Dept. of Environmental Protection

I. Since its inception in 2006 the number of Board Certified SFGAP lawyers has passed the century mark with 102 lawyers currently able to identify themselves as Specialists in State and Federal Government and Administrative Practice. In August 2010 six lawyers joined the ranks of SFGAP certified lawyers. These six lawyers met all the necessary requirements and sat for the exam. The Government Lawyer Section (GLS) Executive Council congratulates the Class of 2010!

David William Bundy, Orlando
Timothy P. Atkinson, Tallahassee
Donna E. Blanton, Tallahassee
Kenneth Brian Hayman, Tallahassee
Patricia Nelson, Tallahassee
Daniel H. Thompson, Tallahassee

II. Upcoming CLE Seminars:

This year's SFGAP Certification Review Course will be held on Friday April 8, 2011, in Tallahassee. This year's review course will focus on the Sunshine State, i.e., the Florida topics that may appear on the certification exam schedule for May 12, 2011, in Tampa.

III. News from the SFGAP Certification Committee:

A. Rule changes to 6-25.2(e) and 6-25.5 were approved by The Florida Bar Board of Governors. Of particular interest is Rule 6-25.5 which provides more choices to SFGAP certified lawyers regarding the manner of listing their area of certification.

A member having received a certificate in state and federal government and administrative practice may list the area in the manner set forth under rule 6-3.9(a) or the listing may

be abridged to indicate that the member is board certified in:

- (1) state and federal government practice;
- (2) state and federal administrative practice; or,
- (3) Florida administrative practice.

B. The sub-specialty proposal was presented for conceptual approval to the Board of Legal Specialization and Education (BLSE) at the Midyear meeting in Orlando on September 24, 2010, by SFGAP Certification Committee Chair F. Scott Boyd and past chair Administrative Law Judge Charles Stampelos. Chairman Boyd and ALJ Stampelos also attended the GLS Executive Council meeting and reported that the BLSE response was encouraging and positive.

C. SFGAP Certification Committee members:

Foster Scott Boyd
Chair
Tallahassee
Term 2011

Cathy Miller Sellers
Vice Chair
Tallahassee
Term 2011

Lawrence Edward Sellers
Board Liaison
Tallahassee
Term 2011

Kirk Lee Burns
West Palm Beach
Term 2013

Charles Robert Fletcher
Tampa
Term 2013

Allen Richard Grossman
Tallahassee
Term 2013

James Aaron Peters
Tallahassee
Term 2013

Mary F. Smallwood
Tallahassee
Term 2012

Charles Aristides Stampelos
Tallahassee
Term 2012

William Eldred Williams
Tallahassee
Term 2012

[Revised: 07-01-2010]

IV. News and Resources for Board Certified Lawyers:

A. News from the January 2011, Issue 37 of "The Capstone" available at FloridaBar.org/certification.

Certification Awards Applications Available at FloridaBar.org/certification. Download the forms to nominate a certified lawyer or judge for the BLSE's 2011 certification awards: *The Justice Harry Lee Anstead Award for Florida Bar Board Certified Lawyer of the Year* and the *Award for Excellence in the Promotion of Board Certification*. Applications are due May 20, 2011. Contact BLSE Consultant Lisa M. Tipton at (850)561-5769 for more information.

Francine M. Ffolkes is the Administrative Law Counsel for the Florida Department of Environmental Protection. She is SFGAP Board Certified and is a member of the GLS Executive Council.

Legislative Update

By Robert Downie, Government Lawyer Section Legislative Committee Chair

The 2011 legislative session is right around the corner, and it promises to be interesting for state and local government in general, and government employees especially. One issue that Governor Scott has mentioned prominently, as have legislative leaders, is government pension reform. The Governor, in an interview published the day before he was sworn in on January 4, 2011, stated that he is concerned with potential shortfalls in the pension fund, and to help eliminate the shortfall is considering moves like eliminating the defined benefit plan for new hires, raising the retirement age, and having employees contribute to their pension plans. The article is here:

<http://www.tampabay.com/news/business/rick-scott-worries-floridas-pension-fund-is-in-even-worse-shape/1143157>.

To date [article penned January 5, 2011] the Florida Legislature has filed only two bills that deal with state employment. One relates to severance packages for elected officials, and the other with the state retirement pension contribution rate for judges. The link to the latter bill is here:

http://www.flsenate.gov/public/Get-File.cfm?File=YirGv%2BDZ1jNt%2B%2FNWM7sSMuKouc0%3D|7%2FPublic%2FBills%2F0200-0299%2F0290%2F_s0290_PDF

However, it is fully anticipated that this session will see various proposals put forth by the Legislature that encompass the Governor's suggestions, and perhaps others. Accordingly, GLS proposed and has received Florida Bar Board of Governors' approval for the following legislative position:

5. Oppose all efforts to reduce the salaries and currently authorized benefits, including any change to the Florida Retirement System that would result in reduced benefits, for government lawyers.

As justification for this position, GLS Chair Mary Ellen Clark submitted the following:

With no general raises for five years, it is getting more difficult to retain,

much less hire, qualified lawyers for government positions. The compensation disparity with private practitioners has continued to grow during this time, from the associate to senior partner levels. Reducing salary and/or benefits for government lawyers will exacerbate this situation and could reduce governments' ability to accomplish important tasks such as criminal justice, civil defense, child support enforcement, consumer protection, and [preventing] insurance fraud, to name a just a few. Government entities without adequate legal staffs must hire outside counsel, usually at rates that dwarf the salaries of even the most senior government lawyers. While all government employees are integral to the function of the State, government lawyers literally defend the State and its citizens every day.

(Mary Ellen, thank you as always for your excellent work and dedication to the Section!)

Other items of particular interest to GLS are two Board of Governors' positions, numbers 5 and 13:

5. Supports language in the Legislative Appropriations Act to permit the payment of government attorneys' Florida Bar membership fees and continuing legal education costs from funds within budget entities.

13. Supports amendment of FS § 119.071 revising the exemption from the attorney's work product of a public agency; and supports amendment of FS § 286.011 revising the criteria for the attorney-client sessions of a public agency.

We certainly appreciate the support on these issues from the Bar, and look forward to working with Bar representatives on our priorities as the session unfolds. The following are important dates related to the 2011 session:

January 28, 2011 5:00 p.m., deadline for submitting requests for drafts of general bills and joint resolutions, including requests for companion bills

March 4, 2011 5:00 p.m., dead-

line for approving final drafts of general bills and joint resolutions, including companion bills

March 8, 2011 Regular Session convenes (Article III, section 3(b), Constitution)

March 8, 2011 12:00 noon, deadline for filing bills for introduction (Rule 3.7(1))

April 26, 2011 50th day—last day for regularly scheduled committee meetings (Rule 2.9(3))

The following are all GLS positions adopted for 2011.

1. Supports language in the Legislative Appropriations Act to permit the payment of government attorneys' Florida Bar membership fees and continuing legal education costs from funds within budget entities, and further supports amendment to general law to authorize all Florida government agencies to pay their government attorneys' Florida Bar membership fees and continuing education costs.

2. Supports amendment to Chapter 119, Florida Statutes, to exempt from disclosure under the public records law, the home addresses and telephone numbers of all current and former government agency employees.

3. Supports full legislative funding of the Prosecutor/Public Defender Training Program.

4. Supports legislative intent language to clarify that statutory restrictions or prohibitions on the private practice of law by government lawyers (other than judges and their staff) do not preclude such lawyers from providing pro bono legal services as contemplated by the Supreme Court of Florida in Amendments to Rules Regulating The Florida Bar, 630 So. 2d 501 (Fla. 1993), which establishes an aspirational goal of 20 hours per year of such services by each Florida lawyer.

5. Oppose all efforts to reduce the salaries and currently authorized benefits, including any change to the Florida Retirement System that would result in reduced benefits, for government lawyers.

The Claude Pepper Outstanding Government Lawyer Award

By Morgan R. Rood, Chair of the Claude Pepper Outstanding Government Lawyer Award Nominating Committee of the Government Lawyer Section

One of the most enjoyable activities of the **Government Lawyer Section** is participating with the President of The Florida Bar in the selection of the recipient of the annual **Claude Pepper Outstanding Government Lawyer Award**. Nominations for this prestigious award are now being accepted. The Claude Pepper award is a Florida Bar award, granted to one individual at The Florida Bar's annual meeting each June. The Claude Pepper Award is presented to government lawyers typically with at least 10 years of service, whose character and accomplish-

ments exemplify the highest ideals of government service. Recipients are well-rounded lawyers, whose importance to their agency or employer is irrefutable. The Claude Pepper award looks for more than just a single even if remarkable event, instead seeking out lawyers demonstrating annual contributions over time and commitment to public service and the public interest. The recipient is determined by a consensus of the President of The Florida Bar, the Chair of the Government Lawyer Section and the Chair of the Claude Pepper Award Nominating Committee of the Government

Lawyer Section, as advised by the Claude Pepper Award Nominating Committee appointed by the Chair of the Government Lawyer Section.

The Claude Pepper Outstanding Government Lawyer Award is named in honor of the Honorable Claude Pepper, a Florida attorney, United States Senator, and United States Congressman, who was an advocate on behalf of the people, and who represented the highest ideals of government service through twelve presidential administrations. Originated in 1989, there have been twenty-one recipi-

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Government Lawyer Section Hosting President's Showcase CLE on Public Records Laws

By Keith Rizzardi, Immediate Past Chair, Government Lawyer Section

The Florida Bar recently selected the Government Lawyer Section to host the President's Showcase CLE program at the upcoming Annual Conference in Orlando. So, in June 2011, GLS will offer a new public records seminar: "Florida and Federal Perspectives on Freedom, Confidentiality, and Access to Information." For registration information, visit www.floridabar.org.

The Sunshine State has a long tradition of open government, a concept embraced in its Constitution. On their respective Inauguration Days, Governors Charlie Crist and Rick Scott each issued Executive Orders creating and re-establishing the Office of Open Government. But in an era when abundant information can collide with privacy and security concerns - from an NCAA investigation to the federal WikiLeaks sensation - Florida lawyers should fully understand the scope of, and exceptions to, the state and federal laws governing public records.

In this seminar, Pat Gleason, Special Counsel for Open Government to Attorney General Pam Bondi and former Special Counsel to Governor Charlie Crist, will discuss Florida's broad public records laws, the exceptions to those laws, and, significantly, the limited statutory work product exemption. Her federal counterpart, Stephen Gidiere III, a partner with Balch & Bingham LLP and author of the American Bar Association's Federal Information Manual, will address the Freedom of Information Act, Federal Electronic Records Initiatives, and the Federal Privacy Act. Together, this pair of experienced attorneys is expected to open eyes to some of the nuances, and consequences, of the state and federal open government laws.



2011 Annual Florida Bar Convention
June 22-25, 2011
Gaylord Palms Resort & Convention Center
6000 W. Osceola Parkway
Kissimmee, Florida 34746

CLAUDE PEPPER OUTSTANDING AWARD

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ents of this prestigious award. **1990 – Navy Lt. Commander, Charles Coles Jeffries, Jr.**; **1991 – Chriss Walker**, Senior Attorney, Department of Health and Rehabilitative Services Office of Child Support, Tallahassee; **1992 – John J. Copelan, Jr.**, Broward County Attorney, Ft. Lauderdale; **1993 – Enoch “Jon” Whitney**, General Counsel for the Department of Highway Safety and Motor Vehicles, Tallahassee; **1994 – Irene M. Quincey**, South Florida Water Management District, West Palm Beach; **1995 – Joseph Lewis, Jr.**, Assistant Attorney General, Department of Legal Affairs, Tallahassee; **1996 – Anthony C. Musto**, Office of the Broward County Attorney, Ft. Lauderdale; **1997 – George B. Barrs**, Office of the Public Defender, West Palm Beach; **1998 – Jorge L. Fernandez**, Office of the County Attorney, Sarasota; **1999 – James A.**

Peters, Assistant Attorney General, Department of Legal Affairs, Tallahassee; **2000 – George Lee Waas**, Assistant Attorney General, Department of Legal Affairs, Tallahassee; **2001 – Deborah K. Kearney**, General Counsel, Department of State, Tallahassee; **2002 – Denise M. Nieman**, Office of the County Attorney, Palm Beach; **2003 – William B. Hammill**, a Civilian Attorney-Advisor with the United States Central Command Stationed at MacDill Air Force Base, St. Petersburg; **2004 – Sheryl Wood**, General Counsel for the South Florida Water Management District, West Palm Beach; **2005 – Jack Shreve**, Senior General Counsel for Consumer Affairs in the Office of the Attorney General, Tallahassee; **2006 – W. Anthony Loe**, Broward County State Attorney’s Office, Homicide Prosecutor, Fort. Lauderdale; **2007 – Judson M. Chapman**, General Counsel for

Dept. of Highway Safety and Motor Vehicles, Tallahassee; **2008 – Patricia R. Gleason**, Cabinet Affairs and Special Counsel for Open Government, Governor’s Office, Tallahassee; **2009 – Gerald B. Curington**, Deputy General Counsel, Governor’s Office, Tallahassee; and, **2010 - John S. Slye**, Deputy General Counsel with the Department of Children and Families, Tallahassee.

The nominations have been mailed to all Section members and is also available on the new Government Lawyer Section website, www.flgovlawyer.org. All nominations for are to be submitted to the program administrator, Summer Hall, at the Florida Bar in Tallahassee, by regular mail or e-mail at shall@flabar.org. We all know of worthy candidates for this honor. Please take a moment to complete a nomination form for the candidate of your choice.

*Check out the NEW
Government Lawyer Section website at
www.flgovlawyer.org*

THE FLORIDA BAR
GOVERNMENT LAWYER SECTION



SECTION CHAIR,
MARY ELLEN CLARK

Meet Our Executive Council

OUR MISSION

We are dedicated to promoting the professionalism and competence of our members; improving the delivery of legal services to all governmental entities; improving the administration of the legal system, and enhancing The Florida Bar’s and the public’s understanding of the unique needs of the government attorney.



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Board of Governors Report

By Bill Davis, Government Lawyer Section Board of Governors Liaison



Last summer, as a brand new member of The Florida Bar Board of Governors, I was appointed Board Liaison to the Government Lawyer Section. Having been asked to report to you, I want to share a few first impressions of this job.

My first impression was with sheer scope of the work involved: Board and committee agenda materials are frequently massive, with meetings full of difficult choices that have to be made about all kinds of things. My diverse practice (criminal, civil and administrative litigation) has made me a fairly “quick study” on a lot of substantive issues; and having chaired the Grievance Committee and represented lawyers in professional matters, I have experience-based insights in disciplinary matters. Yet I am still very much “learning the ropes” with respect all of the rules, procedures and customs involved in all the Bar does.

My second and strongest impression was with the quality of the work: I remain profoundly impressed by the high quality of the deliberation engaged in by Board members and Section leaders. This diverse group seems dedicated to carrying out a high duty to Florida’s 90,000 lawyers, to the judiciary, and to our democracy. Though there are often differences of opinion as to how to proceed, I believe that your Bar and Government Lawyer Section leaders struggle to do the right thing for the right reasons. And as for The Florida Bar staff, they deserve their reputation for being the best in the country.

So, here’s a quick rundown of some the Board’s major responsibilities: The Board, consisting of 52 members, formulates and adopts all policies concerning the activities of the Bar. Additionally, it is responsible for administering all lawyer disciplinary proceedings, on behalf of the Supreme Court. The latter involves a staff of lawyers, a system of grievance com-

mittees, and procedures for Board review before ultimate decisions are made by the Court. We also have a wide range of alternative, remedial programs.

The Board makes recommendations on rules to be adopted by the Court. We develop lawyer certification procedures and hear lawyer appeals from those decisions. We hear appeals regarding proposed ethics opinions and of decisions interpreting lawyer-advertising rules. We select matters for legislative monitoring and advocacy, we develop and adopt an annual Bar budget, and we approve the development of all Bar programs and services for Bar members. We work to support and protect the independence of the lawyer and of the judicial branch of government.

Your Board members and Section leaders are all volunteers, and The Florida Bar does all of its work without any State or Federal funding. We support all of our regulatory, professional, and education activities through volunteers and through membership fees, supplemented by voluntary program fees and services. Yet Florida Bar membership fees have not increased for ten years.

My future reports will focus more on particular Board actions. In the meantime, here is a smattering:

- The Board approved an ethics opinion regarding lawyer communication with employees of government agencies that have in-house counsel, after working closely with leaders of the Government Lawyer Section.
- The Board approved legislative advocacy in support of state-agency discretion to pay the Bar fees of government lawyers; and approved

all the legislative positions submitted for advocacy by the Government Lawyer Section, including protection of lawyer retirement benefits and salaries.

- The Board has embarked on a complete re-write of lawyer advertising rules, to simplify them while addressing first-amendment concerns.
- The Board has reviewed and recommended approval of changes in various Rules of Court, including a proposed rule requiring the electronic service of case documents.
- The Board has recently funded, with small grants, a variety of local-bar diversity initiatives.
- The Board is trying to help members who have been hit especially hard by the economic recession, starting with a Lawyers Helping Lawyers program which will offer ways for lawyers to build a practice and to receive discounted goods and services and an enhanced web-based job and career center, to complement the law-office management assistance efforts of the Bar.

As I campaigned for election to the Board of Governors, I developed this theme for myself:

The Florida Bar can most effectively protect and enhance our profession and our judiciary (1) by being truly inclusive, without regard to material, political or client status; and (2) by building trust and commitment among Florida Bar members through communication and selfless service by Bar leadership.

Thank you for the opportunity to aspire to these goals and to see them in play.

CLEs Available for Sale

Where Do We Go From Here? Public Corruption and Honest Service Fraud Post – *Skilling*

For order information visit www.flgovlawyer.org/cle.

Florida Bar President-Elect Candidates' Statements to Government Lawyers

EDITOR'S NOTE: *The candidates running for the office of President-Elect of The Florida Bar took a few moments to provide our readers with a statement concerning their position regarding some of the matters facing government lawyers over the next few years.*



WALTER G. "SKIP" CAMPBELL, JR.

Lawyers are encouraged by our canon of ethics to assist in improving the profession by being engaged. Now the big question is how do you get government lawyers engaged. I know from speaking to many government lawyers that they want to be engaged within the bar by being involved in leadership roles, but are having a hard time getting known and elected. We need to find answers to this problem so as to utilize their particular expertise. The bar needs to study the makeup of the Board of Governors to make sure all our constituencies are represented including government lawyers. It would be my priority to get more government lawyers involved with the governance of the bar by serving in leadership positions. Government lawyers also should be offered discounts on dues, meeting and membership benefits and CLE course fee waivers and discounts. Jon Whitney,

a government lawyer, served on the Board of Governors with me in the 90's and did a great job. We need more Jon Whitney's to help steer this great organization.



JOHN J. "JAKE" SCHICKEL

I started my career as an Assistant State Attorney and later served as the Chief Assistant to Ed Austin. I started one of the first pre trial diversion programs in the country.

As Chair of the Jacksonville Electric Authority (1.5 billion per year in revenues), I convinced the City Council to merge water and sewer services into the JEA for a combined utility that provided significant savings. Issues involving the environment, land use, condemnation, and municipal bonds were common. I suddenly became the client! I developed a greater appreciation for the myriad of issues facing governmental attorneys that are uncommon to private practice.

I was Chair of BLSE when certification was created for City, County and Local Government. I worked closely with Mike Grogan, Marion Radson, and Chip Rice, and others.

I realize the difficulties, trials and tribulations of government lawyers from the practice angle and also as a client. Today, your challenges are further compounded by the economy and legislation that may affect your pensions. We must work hard to protect what benefits we have. I am afraid that adopting new laws and ethical opinions (all of which I supported) will be easier than solving the financial and economic problems. I want to hear more about your concerns and invite you to contact me at jschickel@cokerlaw.com to tell me how you believe the Bar can better serve the needs of government lawyers.



GWYNNE A. YOUNG

Although government lawyers comprise over 10% of The Florida Bar, they do not have a designated representative on the Board of Governors. As President Elect, I would ask the Board Program Evaluation Committee (PEC) to review the issue of representation for government lawyers on the Board and make recommendations on how this could be accomplished. This review would address the addition of government lawyer representative(s) and how they would be chosen. PEC should also evaluate ways to increase involvement of government lawyers at all levels of bar activities including measures to address the cost of participation for Public Sector lawyers.

Ensuring adequate and necessary funding for the judicial system is critical and must remain the Bar's top priority. Adequate funding of other agencies involved in the justice system is also critical and must be supported.

Compensation and benefits for judges and lawyers involved in the system are within the Bar's legislative positions. I support the Bar's involvement in the pension issue and legislation authorizing payment of Bar dues for Government lawyers.

I began my employment as a government lawyer, have represented local governments, and believe my experience will allow me to focus on resolving issues which impact government lawyers.

President Obama Issues Executive Order on Federal Rulemaking

By Ward P. Griffin, Chair-Elect, Government Lawyer Section

On January 18, 2011, President Barack Obama issued Executive Order (“E.O.”) 13563, “Improving Regulation and Regulatory Review,” the latest in a line of Executive Orders impacting the regulatory programs of a broad range of Federal agencies. E.O. 13563 “is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993.”

A Brief History

In fact, this is not the first time an Executive Order has been issued impacting E.O. 12866. E.O. 12866—issued by President Bill Clinton—was intended, in part, “to enhance planning and coordination with respect to both new and existing regulations.” E.O. 12866 imposed, *inter alia*, certain obligations on agencies regarding the planning, publication, and review of current and future regulatory programs.

For instance, section 4 of E.O. 12866 set forth a planning mechanism by which agencies are mandated to prepare a “unified regulatory agenda,” consisting of “all regulations under development or review,” and a “regulatory plan,” consisting of “the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter.” See also Regulatory Flexibility Act, Pub. L. No. 96-354, reprinted at 5 U.S.C. § 601 note (1996).

Over the succeeding years, different Administrations have amended E.O. 12866 in a variety of ways.

One such amendment—that may be of particular interest to state officials—was proffered through E.O. 13132, issued by President Clinton on August 4, 1999. That Order set forth general policymaking criteria and principles relating to federalism, and imposed related obligations on Federal agencies.

Further, President George W. Bush issued two Orders impacting

the requirements of E.O. 12866. The first—E.O. 13258, issued on February 26, 2002—primarily changed the officials to whom agencies report and coordinate their regulatory activities. The second—E.O. 13422, issued on January 18, 2007—effected more substantive amendments to E.O. 12866, including a requirement that agencies provide the White House Office of Management and Budget “with advance notification of any significant guidance documents.”

Both E.O. 13258 and E.O. 13422 were revoked by E.O. 13497, which was issued by President Obama on January 30, 2009.

The Provisions of E.O. 13563

As noted above, E.O. 13563 “reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866.” The Order also sets forth a series of directives for affected Federal agencies, including:

- Dedicated public participation in the regulatory process, so as to facilitate “the open exchange of information and perspectives”
- Use of “the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible,” as well as ongoing “identif[ication] and consider[ation of] regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public”

- Enhanced coordination across agencies in the regulatory process, thereby “reducing costs and simplifying and harmonizing rules”

- Taking appropriate steps to “ensure the objectivity of any scientific and technological information and processes used to support the agency’s regulatory actions”

- Periodic review of “existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives”

Moving forward, Federal regulators should be mindful of the requirements set forth in E.O. 12866, as amended by E.O. 13563. Nonetheless, if history offers a guide on this subject, President Obama’s recent Order will likely not be the final time the topic is revisited.

For more information on this topic, including links to a fact sheet and other related information, visit the blog of the White House Office of Management and Budget, at www.whitehouse.gov/blog/2011/01/18/regulatory-strategy.

The author is an attorney with the U.S. Commodity Futures Trading Commission in Washington, D.C. The statements contained in the article reflect the personal views of the author and do not necessarily reflect the views of the CFTC.



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2011 Annual
Florida Bar
Convention
June 22-25



Florida and Federal Perspectives on Freedom, Confidentiality, and Access to Information

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Thursday, June 23, 2011

1:00 p.m. - 5:00 p.m.

Staff Contact: Summer Hall

Registration information
available through Annual
Convention page on the
Bar's website

Course No. 1376

Gaylord Palms Resort & Convention Center • 6000 W. Osceola Parkway • Kissimmee, FL 34746 • 407-586-2000

Overview:

The Sunshine State has a long tradition of open government, a concept embraced in its Constitution. On their respective Inauguration Days, Governors Charlie Crist and Rick Scott each issued Executive Orders creating and re-establishing the Office of Open Government. But in an era when abundant information can collide with privacy and security concerns – from an NCAA investigation in Tallahassee to the worldwide WikiLeaks sensation – Florida lawyers should fully understand the scope of, and exceptions to, the state and federal laws governing public records.

In this seminar, Pat Gleason, Special Counsel for Open Government for Attorney General Pam Bondi, and past editor of *The Florida Government in the Sunshine Manual*, will discuss Florida's broad public records laws, the exceptions to those laws, and, significantly, the limited statutory work product exemption. Her federal counterpart, P. Stephen Gidiere III, a partner with Balch & Bingham LLP and author of the American Bar Association's *Federal Information Manual*, will address the Freedom of Information Act, Federal Electronic Records Initiatives, and the Federal Privacy Act. Together, this pair of experienced attorneys is expected to open eyes to some of the nuances, and consequences, of the state and federal open government laws.

Lecture Program

PART I. PUBLIC RECORDS LAWS: COMPARING FLORIDA AND THE FEDS

1:00-1:50 **Overview of Public Records Law**

Pat Gleason, Tallahassee

1:50-2:00 **Creative quiz (with bonus prizes!)**

2:00-2:15 **Break**

2:15-3:05 **Overview of Federal Public Records and Information Laws**

P. Stephen Gidiere III, Birmingham, AL

3:05-3:15 **Creative quiz (with bonus prizes!)**

3:15-3:30 **Break**

PART II. AS APPLIED: STATE AND FEDERAL CASE STUDIES

3:30-4:00 **Seminoles, Secrecy and the NCAA**

Pat Gleason, Tallahassee

4:00-4:30 **Hear ye! hear ye! Now pending before SCOTUS**

P. Stephen Gidiere III, Birmingham, AL

4:30-4:35 **Break**

PART III. QUESTIONS AND ANSWERS (and more prizes too!)

4:35-5:00 **Panel Discussion**

Keith Rizzardi, West Palm Beach, Moderator

Speakers

PAT GLEASON serves as Special Counsel/Open Government for Attorney General Pam Bondi. Prior to rejoining the Attorney General's Office, she was Director of Cabinet Affairs and Special Counsel for Open Government for Governor Charlie Crist. Prior to joining the Governor's Office, she was General Counsel in the Attorney General's Office where she specialized in Sunshine Law and Public Records issues. She is a graduate of Florida State University College of Law. Ms. Gleason is a recognized expert in the area of open government and public records laws in the State of Florida. She was the editor of the *Government in the Sunshine Manual* of the Office of the Attorney General.

P. STEPHEN GIDIERE III is a partner with Balch & Bingham LLP, Birmingham, Alabama in the Environmental and Natural Resources Section and Environmental Litigation Practice Group. His experience and practice cover a wide variety of environmental, natural resources, administrative, and information law topics. Mr. Gidiere has significant experience litigating civil matters against the federal government. He is a nationally-recognized expert in the area of open government and freedom of information laws. He is also the author of *The Federal Information Manual* (ABA 2006), a new book published by the American Bar Association. Mr. Gidiere frequently publishes articles and opinion pieces on current and emerging government information topics. Prior to joining Balch & Bingham LLP, Gidiere served as an attorney-advisor with the United States Department of the Interior of Washington, D.C., where he served as counsel to the U.S. Fish and Wildlife Service, the National Park Service, and the Office of the Surface Mining. He also served as a law clerk to the Honorable Emmett R. Cox of the United States Court of Appeals for the Eleventh Circuit.

CLE CREDIT

CLER PROGRAM

(Max. Credit: 4.0 hours)

General: 4.0 hours

Ethics: 0.0 hours

CERTIFICATION PROGRAM

State and Federal Government Admin Practice: 4.0 hours

City, County Local Government: 4.0 hours

Congratulations, Judge Tamayo!

By Mary Ellen Clark, Chair, Government Lawyer Section, 2010-2011

The Government Lawyer Section is proud to recognize a member of this year's Executive Council, Josefina M. Tamayo, and her appointment by Governor Crist in September, 2010, to the Second Judicial Circuit Court. Born in Cuba and raised in Milledgeville, Georgia, Judge Tamayo received her bachelor's degree from Emory University and law degree from the Georgia State University. After graduation, she moved to Florida and has spent her entire career in public service, beginning as an assistant state attorney for the 12th Circuit State Attorney's Office from 1985 to 1989 and then moving to the 13th Circuit State Attorney's Office from 1989 to 1991. Judge Tamayo went on to serve the former state agency, the Florida Department of Health and Rehabilitation Services, as the chief fostercare managing attorney for District 6, Hillsborough and Manatee counties, from 1991 to 1993 and then advanced to chief legal counsel from 1994 to 1999. In

1999, she moved to Tallahassee to become the general counsel for the Florida Department of Children and Families until 2005, when she was asked to be general counsel for the Florida Department of Business and Professional Regulation and then, in 2007, the general counsel for the Florida Department of Health. A long-time member of the Government Lawyer Section, she was first appointed to the Executive Council in 2007. At her investiture, Judge Tamayo spoke of how proud she was to be a judge who had first been a prosecutor, serving the citizens of the state and protecting the rights of victims who could not help themselves. She passionately voiced her belief that public service is a calling and that it is a privilege to be able to make a difference in the lives of others. She encouraged other government lawyers to persevere, to continue to work hard, and to know that dreams do come true. Congratulations, Judge Tamayo!

Upcoming Meeting & Events

Government Lawyer Section
Executive Council Meeting
June 24, 2011
2:30 p.m. – 5:30 p.m. (tentative)

Government Lawyer Section Membership
Reception & Claude Pepper Award Presentation
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