



THE FLORIDA BAR

The Government Lawyer Section REPORTER

Summer 2007

"No Higher Calling"

From the Chair:

Meeting Goals, Looking Ahead

The goals and objectives of the Section begin with the Executive Council. The Council is composed of individuals that practice in the Executive, Legislative, and Judicial branches of State Government. Council members practice with the Office of the Attorney General, Department of Environmental Protection, Department of Children and Families, and the Department of Business Professional Regulation. Others practice with the South Florida Water Management District, offices of various State Attorneys and various City Attorneys offices.

The section also has members who practice in Washington, D.C. with the Justice Department and the U.S. Merit Systems Protection Board. The council's membership includes private practitioners from small, medium, and large firms including two of the states largest firms, Carlton Fields, P.A. and Gray Robinson, P.A.

Another year brought another list of accomplishments for the Florida Bar's Government Lawyer Section. In 2004, a dream began in Washington, D.C., during the section retreat at the Florida House. The Section recognized the increasing importance of attorney certification programs and agreed to explore the creation of an Administrative and Governmental practice certification program, in cooperation with other sections.

The Section is proud to report that there is a new Government Lawyer Certification. The new certification is called State and Federal Government and Administrative Practice Certi-

fication. The Government Lawyer Section Committee on Certification worked hard over the past year to bring the certification to fruition.

The Section continues to recognize individuals who went beyond their daily practice to become outstanding public servants. Each year The Florida Bar, through the Government Lawyer Section, bestows The Florida Bar's Claude Pepper Outstanding Government Lawyer Award to one individual at The Florida Bar's annual convention in June. The Claude Pepper Award is presented to a government lawyer, typically with many years of service, whose character and accomplishments exemplify the highest ideals of government service. Recipients are well-rounded lawyers, whose importance to their agency or employer is irrefutable. This award recognizes lawyers demonstrating annual contributions over time and commitment to public service and the public interest. The 2007 recipient was Judson M. Chapman, General Counsel, Department of Highway Safety and Motor Vehicles, Tallahassee.

The Section also awards the Distinguished Public Service Award to one or more qualified individuals at The Florida Bar midyear meeting each January. The Distinguished Public Service Award recognizes dedicated government lawyers whose recent contributions to the profession and the community deserve special recognition. This year, the Section recognized Geralyn Atkinson-Hazelton, General Counsel with State

of Florida Unemployment Appeals Commission, and three Deputy General Counsels with the Commission, Norman Blessing, John Maher, and Robert Whaley.

In addition to our traditionally successful seminars, such as *Practicing Before the Supreme Court*, *Government in the Sunshine* and *Practicing Before the Legislature*, the Section added two new seminars as a result of certification.

The *SFGAP Certification Review Course* provides the administrative and government practitioner with valuable and substantive information regarding agency practice, agency rulemaking, administrative appeals, government contracting, bid protests, government litigation, open records, Sunshine Law and government ethics.

Litigating With Government Entities will explore specific issues in government entity litigation. The impact of sovereign immunity, litigation involving statutory challenges, administrative law and attorney's fees, and the unique ethical issues facing those who sue and represent government entities will be covered. A panel of practitioners will also discuss the unique do's and don'ts of government entity litigation.

State and Federal Government and Administrative Practice (SFGAP) Certification Review provides the administrative and government practitioner with valuable and substantive information regarding agency practice, agency rulemaking, administra-

continued, next page



THE GOVERNMENT LAWYER
SECTION REPORTER

Robert Downie II, Editor
Alison Kelly, Assistant Editor

This newsletter is prepared and published
by the Government Lawyer Section of The
Florida Bar.

Carolyn M. Snurkowski, Chair
4519 Camden Road
Tallahassee, FL 32303-7224
Phone: 850/414-3300
Fax: 850/487-0997

Email: carolyn_snurkowski@oag.state.
fl.us

Robert 'Bob' Krauss, Chair-elect
Office of the Attorney General
3507 E. Frontage Road, Suite 200
Tampa, FL 33607-7013
Phone: 813/287-7900
Fax: 813/281-5500

Email: bob_krauss@oag.state.fl.us

Barbara Wingo, Treasurer
P.O. Box 113125
Gainesville, FL 32611-3125
Phone: 352/392-1358
Fax: 352/392-4387
Email: wingo@ufl.edu

Drew F. Winters, Secretary
Dept. of Business & Professional
Regulation
1940 N Monroe St
Tallahassee, FL 323034700
850/487-3197
Fax: 850/414-6749

E-Mail: Drew.Winters@dbpr.state.fl.us

Joseph C. Mellichamp, III,
Immediate Past Chair
Levy Law Firm
1828 Riggins Lane
Tallahassee, FL 32308-4885
Phone: 850/219-0220
Fax: 850/222-0398

Email: jcm.levylaw@comcast.net

Arlee J. Colman, Program Administrator
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5625

Statements or expressions of opinion or
comments appearing herein are those of
the editor and contributors and not of
The Florida Bar or the Section.

ARTICLES FOR NEXT ISSUE DUE
Sept. 15, 2007

Articles formatted in Word Perfect 5.0 or
6.0 or Microsoft Word may be submitted
on computer disc with hard copy attached
(or e-mailed to acolman@flabar.org.). Please
contact Arlee Colman at 850/561-5625.

FROM THE CHAIR

from preceding page

tive appeals, government contracting,
bid protests, government litigation,
open records, Sunshine Law and gov-
ernment ethics. This brochure is in-
cluded in this issue of the *Reporter*.

This year I have truly appreciated
the hard work and commitment of
all the Section's officers, and execu-
tive council members. In particular,

I extend my sincere gratitude to
Keith Rizzardi, George Wass, Robert
Downie, Clark Jennings, Francine
Ffolkes, Booter Imhof, Morgan Rood
and Barbara Wingo and Allen Gross-
man for their hard work and counsel
over a very active year. And I would
also like express my appreciation to
our section administrator Arlee J.
Colman for her work on behalf of the
Section.

— *Joseph C. Mellichamp, III, Chair*

2007-2008 Government Lawyer Section Slate of Officers and Executive Council Members

Officers:

Chair: Carolyn M. Snurkowski

Chair-elect: Robert J. Krauss

Treasurer: Barbara G. Wingo

Secretary: Drew F. Winters

Immediate Past Chair: Joseph C. Mellichamp

Executive Council:

Certification: Keith Rizzardi

Claude Pepper Award: Morgan Rood

Continuing Legal Education: Joe Mellichamp

Long Range Planning/Legislative*: Clark Jennings

Membership: Juan Collins

Publications: Alison Kelly

Technology: Booter Imhof

District Representatives:

First District: Allen Grossman

Second District: Mitchell Franks

Third District: Howard Pohl

Fourth District: Denise Nieman

Fifth District: Jordan Clark

Out-of-state: Ward Patrick Griffin

At-large Representatives:

Katherine V. Blanco

Diana K. Bock

Mary Ellen Clark

Kendra Davis

Jan McLean

Joel Silvershein

Betsy Stupski

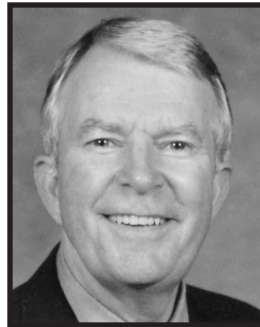
Josie Tomayo

George Waas

* Includes Annual Retreat

Claude Pepper 2007 Award Winner

*Congratulations to this year's winner of The Florida Bar
Claude Pepper Outstanding Government Lawyer Award*



Judson M. Chapman, General Counsel
Department of Highway Safety and Motor Vehicles
Tallahassee, Florida

The award was presented to Mr. Chapman during The Florida Bar Annual Meeting, June 2007 at the Marriott World Center, Orlando.

Mr. Chapman joins the prestigious list of past winners:

- 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 Wass**, 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
- 2007 **Judson M. Chapman**, General Counsel for Dept. of Highway Safety and Motor Vehicles, Tallahassee

Commission on Ethics Update

By Virlinida Doss

The last time a summary of Commission on Ethics opinions appeared in the Reporter was in the summer of 2006. Since then, the Commission has rendered 28 opinions, which fall into the categories of post-employment and post-officeholding restrictions, gifts and expenditures, conflicts of interest, voting conflicts, and a lone opinion on anti-nepotism. To save readers time, I have omitted those opinions, which either essentially restate established principles or are so fact-specific that they are unlikely to provide any general guidance. Please note that these are abbreviated versions of the opinions, and the entire opinion should be read before relying on it. The full text of the opinions can be found at www.ethics.state.fl.us.

Anti-Nepotism

In **CEO 06-13**, the Commission found that Section 112.3135, Florida Statutes (“the anti-nepotism law”) was applicable to prohibit employments, appointments, promotions, or advancements made or advocated by members of a municipal charter school authority board and its administrators of their respective relatives.

Post-Public Employment and Officeholding Restrictions

The local government “revolving-door” prohibitions of Section 112.313(14), Florida Statutes were the subject of **CEO 06-22 and CEO 07-6**. In CEO 06-22, the Commission advised a former county commissioner that he was prohibited for a period of two years after leaving office from representing (including mere attendance at a county commission meeting or workshop) a client for compensation either before the county commission collegially or before its individual members, as well as the commissioners’ aides and the “immediate support staff” of the county manager. In CEO 07-6, the Commission found that a former county commissioner was not prohibited from merely attending, on behalf

of a client, gatherings which are not regular meetings of the county commission and which are not advertised or noticed under the Sunshine Law. However, the Commission found that the former commissioner would be prohibited from making comments on behalf of a client at such a gathering if a county commissioner or one or more enumerated county employees were present.

CEO 07-4 and CEO 07-10 address the prohibitions of Section 112.313(9), Florida Statutes, which include restrictions on state employees. In CEO 07-4, the inquiry came from a person who had been employed by both the Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS) within the past two years. The issue was whether this person would be prohibited from personally engaging in compensated representation before the Financial Services Commission (FSC), OIR, or the Office of Fraud Regulation (OFR) for a period of two years after leaving employment with DFS. The Commission found that OIR and DFS were separate agencies for the purposes of the statute, with OIR and OFR falling under the FSC, which is comprised of the Governor and Cabinet. The Commission concluded that the employee would be prohibited from engaging in compensated representations before OIR, OFR, and the FSC for a period of two years after leaving employment with OIR, as well as representations before the DFS for two years following her departure from that agency. CEO 07-10 addresses Section 112.313(9), Florida Statutes and Section 112.3185, Florida Statutes, which limits certain post-public-service employments with entities contracting with the State. This opinion involved a former employee of the Department of Juvenile Justice (DJJ) who wanted to work for a company that had a contract with DJJ. In answering a series of questions, the Commission found that because the employee had no role in the procurement of the contract that he would be working on (it was with a different agency), and had no responsibility

for the contract while employed at DJJ, that the proposed employment would not be prohibited. However, the former employee was cautioned that contact with DJJ might still be prohibited under Section 112.313(9), Florida Statutes.

Gifts

CEO 06-27 deals exclusively with the “gifts law”, which can be found in Section 112.3148 of the Florida Statutes. In this opinion, the Commission found that a city official has received a “gift” when the city pays travel expenses for the city official’s spouse or other guest to accompany the city official on a city-sponsored trip to Europe.

The remaining “gift law” opinions concern Section 112.3215 of the Florida Statutes, enacted in December 2005, which prohibits Executive Branch agency employees who file a financial disclosure from accepting “expenditures” from Executive Branch lobbyists and their principals.

In the first opinion on the subject, **CEO 06-4**, the Commission found that an association that lobbies Executive Branch agencies could host an event for Executive Branch agency officials and employees that includes food, beverages, and entertainment if it collects a flat, per-person entrance fee based upon the total cost to plan, produce, stage, and clean up after the event divided by the number of persons reasonably expected to attend. By contemporaneously giving equal or greater consideration, the Commission found that Executive Branch agency officials and employees would not have received a prohibited lobbying expenditure.

In **CEO 06-6**, the Commission found that an executive agency employee engaged to marry a lobbyist for a private firm was prohibited from accepting wedding gifts paid for by lobbyists who were registered to lobby the Executive Branch. However, the bride-lobbyist could accept gifts intended solely for her since she was not an executive agency employee. Additionally, Section 112.3215,

Florida Statutes would not prevent the executive agency employee from accepting gifts from his bride, who would be considered a "relative." However, the Commission concluded that parties or gifts from lobbyists that were intended for the couple would be prohibited.

CEO 06-7 speaks to a number of scenarios coming from the Department of Agriculture and Consumer Services. Of note, the Commission found that Section 112.3215(6)(a), Florida Statutes would not prohibit Department employees from participating in a food safety seminar underwritten with direct and in-kind contributions from organizations, which may be principals of Executive Branch lobbyists, where only a small percentage of conference attendees were from the Department, where attendees paid a registration fee that covered most costs associated with the conference, and where Department attendees do not receive any benefit not enjoyed by other attendees.

In a similar vein, **CEO 07-3** found that a discounted registration rate given to employees of the Office of Financial Regulation to attend a conference in their official capacity was neither a gift under Section 112.3148, Florida Statutes, nor an expenditure under Section 112.3215, Florida Statutes, even though some of the sponsoring organization's members may be regulated by the Office of Financial Regulation and the conference is underwritten by entities that may be Executive Branch lobbyists or principals. Because the discounted registration rate was being offered to the agency and not the employees personally (since it was the agency that would designate which employees would attend the conference and then would pay their registration fees along with other travel expenses), the Commission did not view the discounted registration rate as a gift to the individual employees, but rather as a gift to the agency.

Awards and the question of "indirect" expenditures were at issue in **CEO 06-14**. The Commission found that where corporations registered as principals of Executive Branch lobbyists make donations to non-profit corporations that administer the annual Prudential Financial-Da-

vis Productivity Awards, and where those corporations have no say in determining who receives an award or who attends the awards luncheon, the corporate donations are not expenditures prohibited by Section 112.3215, Florida Statutes.

Similarly, in **CEO 06-15**, the Commission found that no prohibited expenditure had been made where corporations that served as principals of Executive Branch lobbyists made donations to the United Way of Florida and its local fiscal agents, which were then used to generate interest and participation among officers and employees of State agencies in the Florida State Employees' Charitable Campaign. Thus, agency officers and employees could accept those prizes and donations.

However, promotional items can be a different matter, as the Commission determined in **CEO 06-17**. The Commission concluded that companies who are principals of Executive Branch lobbyists may not give promotional items to Executive Branch agency officials and employees who file financial disclosure if they attend benefit fairs held during open enrollment. Here, the focus was on trinkets given out at insurance provider benefit fairs for state employees. Notwithstanding their nominal value, these items were intended for the personal benefit of the recipients and for the purpose of creating goodwill, and thus were expenditures

that could not be accepted by covered employees.

On the other hand, the Commission found in **CEO 06-18** that Section 112.3215, Florida Statutes does not prohibit Executive Branch agency officials and employees who file financial disclosure from receiving discounted phone service from a cellular telephone company that is the principal of lobbyists who lobby the Executive Branch. The Commission came to this conclusion because discounted rates were made available in the ordinary course of business to all government employees nationwide and were not given to secure the "goodwill" of an agency official or employee.

Voting Conflicts of Interest

Always at issue in voting conflict questions is the question of whether the measure to be voted upon would inure to the "special" private gain or loss of the voting official, or to that of his or her relative, principal, employer, or business associate. In **CEO 06-20**, the Commission determined that a county commissioner did not have a voting conflict on measures relating to a proposed county judicial complex to be located near properties owned by her and her husband's companies. Because the commissioner's properties were already developed, would not be directly impacted by the project, and comprised only a few of many similar properties in the area,

continued, next page

2007 - 2008 Section Calendar

SFGAP Certification Seminar

August 16 - 17, 2007

Leon County Civic Center, Tallahassee

The Florida Bar

General Meeting of Committees and Sections

[Section Executive Council Meeting]

September 7, 2007

Tampa Airport Marriott

The Florida Bar Midyear Meeting

[Section Executive Council Meeting]

January 18, 2008

Miami, Downtown Hyatt Regency

ETHICS UPDATE

from preceding page

the Commission found that any gain or loss to the Commissioner or her husband would be “remote or speculative” under these circumstances.

In **CEO 07-7**, the Commission found that a city councilman, whose company was a supplier of a local manufacturer of fire trucks, was not presented with a voting conflict regarding measures to provide financial incentives to the manufacturer in an effort to keep the manufacturer from relocating. The facts indicated that the councilman would still sell to the truck maker even if it relocated and more importantly, there was no way of knowing whether the incentives would prevent the manufacturer from relocating. Therefore, the Commission found that any gain received by the city councilman from the vote would be “remote and speculative.”

CEO 06-21 dealt with a unique situation where a member of the town commission of the tiny town of Marineland (only five registered electors) was employed by an entity, which was working with another property owner to develop property in the town. The specific issue was a rezoning application filed by the other property owner. The Commission found that any benefit to the commissioner’s employer would be remote and speculative, because of the number of additional hurdles that the applicant for rezoning would have to face. Because the town was so small and the vote would affect everyone equally, the Commission found that any gain to the employer would not be considered “special.”

Finally, in **CEO 07-5**, the Commission looked at a situation where a county commissioner was presented with a vote that could affect the clients of the lobbying firm that employed her husband. Because the commissioner’s husband was not an owner, officer, or director of the lobbying firm and received no income from the fees generated from the firm’s work on the matter involving the county, the Commission found no voting conflict.

Conflicts of Interest

The remaining opinions concern conflicts of interest under Sections

112.313(3) and (7), Florida Statutes. In **CEO 06-24**, the Commission found that a conflict of interest existed where a member of a county transportation service board was employed by one of the county’s contract transportation providers. The Commission found that this employment would be a conflict because the member would, in his public capacity, be reviewing the work of his private employer. The Commission determined that the exception found in Section 112.313(12), Florida Statutes, which allows the appointing entity to waive conflicts for persons serving on advisory bodies, was not applicable here because although this Board considered itself an advisory body, it in fact had the independent authority to act in certain situations.

In **CEO 06-10**, the Commission determined that no conflict of interest was created under Section 112.313(7)(a), Florida Statutes, where Department of Agriculture and Consumer Services employees applied to participate in cost-share programs administered by the Division of Forestry, so long as the employees had absolutely no involvement in evaluating their own applications or in monitoring their compliance with program requirements.

The Commission issued several opinions in the area of dual employment involving situations where the requesting party was employed by a sub-contractor of the entity contracting with his or her agency. The first opinion on this issue, **CEO 06-23**, involved a newly-elected member of a district school board who was also employed through a management company, as an assistant principal of a charter school sponsored by the school district. The Commission found that the School Board member’s ability to objectively evaluate the performance of the charter school would be compromised if she continued to be employed to perform services and functions at the charter school.

In **CEO 07-2**, the Commission dealt with a rather factually complex set of circumstances. Here, a member of a community redevelopment agency (CRA) wanted to become a sub-consultant to a prime consultant hired by an economic development commission to update the CRA’s redevelopment plan. The Commission said

there would be no violation under the first part of Section 112.313(7), Florida Statutes because the company that the member would be working for was not doing business with, or was regulated by the CRA. As to the second part of the statute that prohibits any contractual relationship that might tempt one to disregard his or her public responsibilities, the Commission also found no conflict because although the member might be asked to explain the report’s recommendations and the factual bases or support therefore to the CRA, neither the member, the member’s corporation, nor the prime consultant stood to benefit in any manner from the recommendations or outcome of the report.

The last opinion concerning conflicts of interest, **CEO 07-9**, involved a Department of Children and Family Services (DCF) employee who was the contract manager responsible for a contract between DCF and a non-profit. The employee was secondarily employed by an organization that served as the subcontractor actually performing the services called for in the DCF contract. The Commission found that such employment would create a conflict because the employee was the contract manager for the contract with the nonprofit entity, her duties at DCF had the potential to impact her private employer.

The Commission also rendered several opinions dealing with exceptions to the conflicts of interest laws. In **CEO 06-28**, an assistant principal employed by a school district also owned a one-third interest in a corporation that owned a parcel of property that the school district wanted to purchase for the purpose of constructing one or more schools. The Commission determined that the “sole source” exemption contained in Section 112.313(12)(e), Florida Statutes applied in this case because the school board determined that the assistant principal’s property was the only suitable property available for its needs. While real property would not necessarily be a sole source, in this case the school board had made and documented extensive efforts to locate property, and ultimately this was the only viable parcel. Therefore, the assistant principal was exempt from the proscriptions of Section

112.313(3) and (7), Florida Statutes. **CEO 07-1** involved a housing authority member whose law firm merged with a firm that provided legal services to the authority. The Commission concluded that a conflict of interest did not exist because the firm was hired to provide the services prior to the member joining the firm. However, the Commission opined that a conflict of interest would be created if the authority entered into a new agreement with the firm, absent the applicability of some exemption.

In **CEO 07-11**, the Commission found that a school board member would not be prohibited from being employed by a nonprofit, tax-exempt organization that cooperates with the school district to provide educational enhancement programs. In this case,

the Commission relied on a specific exemption to the conflicts of interest statute involving tax-exempt organizations found in Section 112.313(15), Florida Statutes.

Finally, the Commission issued two opinions relating to members of the Legislature: **CEO 06-12 and CEO 06-19**. In CEO 06-12, the Commission found that a conflict of interest would exist under Section 112.313(7), Florida Statutes if a member of the Florida House of Representatives were to serve as President of the Florida Association of Realtors (FAR). The Commission cited case law indicating that the relationship between a member of a voluntary organization and the voluntary organization is contractual in nature. Here, the Commission found that this contractual

relationship would create a continuing or frequently recurring conflict, as the FAR President had significant responsibilities related to lobbying the Legislature. Additionally, the Commission found in CEO 06-19 that a member of the Florida House of Representatives could not be employed as a part-time consultant handling public relations for a waste management company. Following CEO 06-12, the Commission determined that the inability to distinguish between the legislator's role as a paid consultant and his duties as an elected representative indicates a continuing or frequently recurring conflict of interest or an impediment to the full and faithful discharge of public duties.

Certification Update

By Keith Rizzardi

Congratulations to the new group of government lawyers who will soon be able to declare themselves experts in State and Federal Government and Administrative Practice (SFGAP).

The members of The Florida Bar, through their applications, justified the Government Lawyer Section's push to create this new certification area. Forty-five people applied to be among the group of certified lawyers who will become certified in this area on August 1, 2007, based on the program's "grandfather" clause. (A second -- and final -- group of grandfather clause applicants must submit their applications for certification no later than October 31, 2007.) In addition, more than a dozen lawyers applied to take the very first examination, currently scheduled for October 1, 2007 at the Tallahassee-Leon County Civic Center. Official announcements for this first group of applicants, including grandfather clause applicants and exam applicants, will be made by The Florida Bar on November 14, 2007.

To help the brave and ambitious souls who are preparing for the upcoming and future SFGAP examinations, the Government Lawyer Section developed a new, advanced level CLE program. The State and

Federal Government and Administrative Practice (SFGAP) Certification Review Course will be hosted on August 16 and 17, 2007, also at the Tallahassee-Leon County Civic Center. Topics to be covered at the program include: Florida and Federal APA adjudication and rulemaking; government procurement and contracting; state and federal public records and sunshine laws; Federal APA litigation; and attorney's fees.

The burden of writing the inevitable exam, and reviewing the many grandfather clause applications, falls upon the SFGAP Certification Standing Committee. To help all potential applicants, the Standing Committee developed a series of policies, as well as a list of potential test topics, known as the "test specifications" or "content allocation plan." All these materials, as well as applications, are available online through The Florida Bar's "professional practice" links, or by contacting Zina Jackson at (850) 561-5768 or ajackson@flabar.org.

Potential applicants are advised that the Standing Committee, like all new committees, is still learning how to best administer its duties. Sadly, some lawyers, after reviewing the limited list of "pre-approved" CLE programs, erroneously concluded that

they lacked sufficient CLE credits or were ineligible for certification through the grandfather clause. However, many other CLE programs not on that "pre-approved" list can still be considered, upon review of course materials and information, by the Standing Committee. If you were among the lawyers who mistakenly thought themselves ineligible, please consider applying for certification during the next cycle, and be sure to ask questions about your eligible CLE programs. (And remember, submit your grandfather clause application before October 31, 2007!) Also, for anyone falling short of the needed credits, please note that the Government Lawyer Section's new review course offers 13.5 CLE credits of advanced coursework that counts towards the 50 credits needed for SFGAP Certification.

Once again, for those of you soon to be among the first group of Certified State and Federal Government and Administrative Practice lawyers, congratulations. And remember, today's applicant may be tomorrow's Standing Committee member. Your interest in, and future contributions to, this important new certification area are greatly appreciated.

Recent Appellate Decisions

By Betsy Stupski, Law Librarian, Office of the Florida Attorney General, Tallahassee, FL

The following is a synopsis of several recently issued appellant decisions that may be of interest to governmental attorneys. To read a complete version of the Appellate Alert published by the Florida Attorney General's Office please visit the website at www.myfloridalegal.com/aglink

In re: Electronic Filing of Briefs 07-1

The First District Court of Appeal issued an order (Administrative Order 07-1) requiring all attorneys to use email to send an electronic copy of briefs, petitions, responses and replies, starting with case number 1D07-3000. The order provides guidance as to appropriate email address and format.

University Board of Trustees v. Andrew 1D06-5893 5/31/07

Change of venue was inappropriate because the University had substantial presence in the County.

Plaintiffs sued University of Florida in Columbia County for wrongful death relating to allegations of medical malpractice. The University

moved for change of venue arguing that they only established a hospital in Columbia County not a branch campus. The trial court denied the motion.

The First District reviewed whether the University had a substantial presence for the transacting of customary business as required by F.S. § 768.28(1). The court affirmed the trial court, saying "the statute clearly provides that any substantial presence will qualify. The evidence presented below shows that in the years preceding the alleged negligence, the University leased a building, hired employees, billed millions of dollars in medical bills, and paid thousands of dollars to vendors at the hospital."

Contractpoint Florida Parks v. Alex Sink 1D06-4746 6/5/07

.S.11.066, requiring a legislative appropriation to pay a damage award, does not apply to breach of contract actions.

Plaintiff and Departmental of Environmental Protection (DEP) were in a contract dispute. Following a

jury trial, judgment against DEP was entered for \$628,543. DEP refused to pay pursuant to F.S. 11.066 because the legislature had made no appropriation. Contractpoint filed a Writ of Mandamus to compel Florida's chief financial officer to pay the damage award. The trial court denied the Writ based on the clear language of F.S. 11.066(3).

The First District reversed, saying that F.S. 11.066 regarding the necessity of a legislative appropriation, does not apply to breach of contract actions. The court noted that there was 22 years of case law subjecting the state to breach of contract actions. The court went on to certify the following question to the Florida Supreme Court:

DOES SECTION 11.066, FLORIDA STATUTES, APPLY WHERE JUDGMENTS HAVE BEEN ENTERED AGAINST THE STATE OR ONE OF ITS AGENCIES IN A CONTRACT ACTION?

Zingale v. The Crossing 1D06-2026 5/8/07

Property Appraiser had standing to challenge the constitutionality of statute from a defensive posture.

A community development district (CDD) challenged an assessment of ad valorem tax claiming that, pursuant to statute, it was exempt because it qualified as a municipality. The Property Appraiser challenged the constitutionality of the statute as an affirmative defense. The trial court struck the Appraiser's affirmative defense and entered a final judgment in favor of the CDD.

After reviewing the use of the property by the CDD, the First District affirmed the CDD's exemption from ad valorem taxes but stated that the trial court erred by striking the Appraiser's affirmative defense. An appraiser has standing to challenge the constitutionality of a statute from a defensive posture.



Our program administrator's newest artwork

Arlee Colman completed this painting of a manatee at the recent "Humanatee" Festival in St. Marks, Florida, to welcome the manatees back to North Florida's waters. The original pastel has been accepted into the Florida State University Museum of Fine Arts Summer Show that opened June 8 in Tallahassee.



THE
FLORIDA
BAR
CLE

The Florida Bar Continuing Legal Education Committee and the
Administrative Law Section, Environmental & Land Use Law Section,
and the Government Lawyer Section present

State and Federal Government and Administrative Practice (SFGAP) Certification Review Course

COURSE CLASSIFICATION: ADVANCED LEVEL

One Location: August 16 & 17, 2007

Tallahassee-Leon County Civic Center • 505 West Pensacola Street
Tallahassee, Florida 32301 • 850/487-1691

Course No. 0630R

The SFGAP Certification Review Course provides the administrative and government practitioner with valuable and substantive information regarding agency practice, agency rulemaking, administrative appeals, government contracting, bid protests, government litigation, open records, the Sunshine Law and government ethics.

Those who have applied to take the certification exam may find this course a useful tool in preparing for the exam. It is developed and conducted without any involvement or endorsement by the BLSE and/or Certification committees. Those who have developed the program, however, have significant experience in their field and have tried to include topics the exam may cover. Candidates for certification who take this course should not assume that the course material will cover all topics on the examination.

Thursday, August 16, 2007

1:00 p.m. – 1:30 p.m.

Late Registration

1:30 p.m. – 1:35 p.m.

Welcome and Introductions

*Francine M. Ffolkes, Florida Dept. of Env.
Protection, Tallahassee*

1:35 p.m. – 3:20 p.m.

Federal APA Adjudication and (Rulemaking and Government Contracting)

*Prof. Mark Seidenfeld, College of Law, FSU,
Tallahassee*

3:20 p.m. – 3:30 p.m. **Break**

3:30 p.m. – 4:20 p.m.

Public Records Act and Sunshine Law

*Patricia R. Gleason, Director of Cabinet Affairs
& Special Counsel for the Office of Open
Government, Governor's Office, Tallahassee*

4:20 p.m. – 5:30 p.m.

Federal APA Litigation, Attorneys fees, Federal Ethics and Public Records (FOIA, etc.)

T. Neal McAilley, White & Case, Miami

Friday, August 17, 2007

8:00 a.m. – 8:10 a.m.

Welcome and Introductions

*Seann M. Frazier, Greenberg Traurig, LLP,
Tallahassee*

8:10 a.m. – 9:00 a.m.

Florida APA Adjudication

*Hon. John G. Van Laningham, Div. of
Administrative Hearings, Tallahassee*

9:00 a.m. – 9:50 a.m.

Competitive Procurement Under Florida APA

*J. Andrew Bertron, Jr., Sutherland Asbill &
Brennan, Tallahassee*

9:50 a.m. – 10:00 a.m. **Break**

10:00 a.m. – 10:50 a.m.

Florida APA Rulemaking (including Rule Challenges)

*Francine M. Ffolkes, Dept. of Env. Protection,
Tallahassee*

10:50 a.m. – 11:40 a.m.

Other Florida APA Remedies and Principles

*Seann M. Frazier, Greenberg Traurig, LLP,
Tallahassee*

11:40 a.m. – 12:30 p.m.

Judicial Review of Agency Action (Florida Administrative Appeals)

David Caldevilla, de la Parte & Gilbert, Tampa

12:30 p.m. – 1:30 p.m.

Lunch (included in registration fee)

1:30 p.m. – 2:20 p.m.

Sovereign Immunity/11th Amendment Immunity

*Pamela Lutton, Office of the Attorney General,
Tallahassee*

*Stephanie Daniel, Office of the Attorney
General, Tallahassee*

2:20 p.m. – 3:10 p.m.

Government/Tort Litigation (State and Federal)

*Pamela Lutton, Office of the Attorney General,
Tallahassee*

3:10 p.m. – 3:20 p.m. **Break**

3:20 p.m. – 4:10 p.m.

Civil Rights Action under 42 U.S.C. Section 1983

*Stephanie Daniel, Office of the Attorney
General, Tallahassee*

4:10 p.m. – 5:00 p.m.

Florida Ethics

*Virindia Doss, Fla. Commission on Ethics,
Tallahassee*

CLE CREDITS

CLER PROGRAM

(Max. Credit: 13.5 hours)

General: 13.5 hours Ethics: 1.5 hours

CERTIFICATION PROGRAM

(Max. Credit: 7.0 hours)

Appellate Practice: 1.0 hours

Civil Trial: 3.0 hours

State & Federal Gov't &

Administrative Practice: 13.5 hours

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

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News or available in your CLE record on-line) you will be sent a Reporting Affidavit if you have not completed your required hours (must be returned by your CLER reporting date).

HOW TO REGISTER



ON-LINE: www.FLORIDABAR.org

*NEW * SECURE * FASTER



MAIL:
Completed form
w/check



FAX: 850/561-5816
form with
credit card information

REFUND POLICY: Requests for refund or credit toward the purchase of the audio/CD or 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., August 9, 2007 that they will be unable to attend the seminar, will have an additional \$20 retained. Persons attending under the policy of fee waivers will be required to pay \$20.

Register me for the "State and Federal Government and Administrative Practice (SFGAP) Certification Review Course."

ONE LOCATION: (288) LEON COUNTY CIVIC CENTER, TALLHASSEE, FL (AUGUST 16 & 17, 2007)

TO REGISTER OR ORDER AUDIO/CD OR COURSE BOOKS, BY MAIL, SEND THIS FORM TO: The Florida Bar, 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 # _____

AJC: Course No. 0630R

REGISTRATION FEE (CHECK ONE):

- Member of the Administrative Law Section, Environmental & Land Use Law Section, or Government Lawyer Section: \$230
- Non-section member: \$255
- Full-time law college faculty or full-time law student: \$138
- Persons attending under the policy of fee waivers: \$20
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. Fax to 850/561-5816.) MASTERCARD VISA

Signature: _____ Exp. Date: ____/____ (MO./YR.)

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 — AUDIO/CD — ON-LINE — PUBLICATIONS

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 08/17/07. TO ORDER AUDIO/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.**

Please include sales tax unless ordering party is tax-exempt or a nonresident of Florida. If this order is to be purchased by a tax-exempt organization, the course book/tapes must be mailed to that organization and not to a person. Include tax-exempt number beside organization's name on the order form.

COURSE BOOK ONLY

Cost \$35 plus tax
(Certification/CLER credit is not awarded for the purchase of the course book only.)

TOTAL \$ _____

AUDIOTAPES

(includes course book)
\$230 plus tax (section member)
\$255 plus tax (non-section member)

TOTAL \$ _____

AUDIO CD

(includes course book)
\$230 plus tax (section member)
\$255 plus tax (non-section member)

TOTAL \$ _____

ON-LINE PROGRAMS! To view and/or listen to this and other courses on-line, or to download to your computer as a "CLEtoGo," go to www.legalspan.com/TFB/catalog.asp

Related Florida Bar Publications can be found at <http://bookstore.lexis.com/bookstore/catalog>.
Click on "Jurisdictions," then "Florida" for titles.

ATTORNEY GENERAL OPINIONS UPDATE

The following is a synopsis of several recently issued Attorney General Opinions that may be of interest to governmental agency attorneys. To read a complete version of any of these opinions please visit the Florida Attorney General's website: www.myfloridalegal.com. Click on "AG Opinions" to view a searchable database of opinions dating from 1974. Government attorneys may also call the Opinions Division of the Attorney General's Office to discuss any of these opinions or other questions they may have by calling (850) 245-0158.

AGO 2006-30 – PUBLIC RECORDS

A municipality may respond to a public records request requiring the production of thousands of documents by composing a static web page where the responsive public documents are posted for viewing if the requesting party agrees to the procedure and agrees to pay the administrative costs, in lieu of copying the documents at a much greater cost.

AGO 2006-36 – SOVEREIGN IMMUNITY

A county health foundation, leasing and operating a hospital owned by the county hospital board, an independent special taxing district, is entitled to sovereign immunity under the provisions of section 768.28, Florida Statutes.

AGO 2006-41 – ATTORNEYS

The Florida Board of Hearing Aid Specialists, is authorized to implement Part II, Chapter 484, Florida Statutes, regulating hearing aid specialists. The board reviews and disposes of complaints filed against licensees pursuant to Chapter 456, Florida Statutes. As an administrative agency, the board does not have the authority to hire private counsel for their prosecutorial services except in the limited circumstances set forth in section 456.073(2) and (4), Florida Statutes.

AGO 2006-42 – REESTABLISHMENT OF MUNICIPALITY

A municipality, in which the gov-

ernment ceased functioning in the 1920's, currently exists even though it has not been active for a number of years. In order to elect town officers who can begin the task of reorganizing the town government, the circuit court must order that an election be held.

AGO 2006-44 – SPECIAL DISTRICTS

The expansion of the general authority of water control districts under Chapter 298, Florida Statutes, to sell or convey real property would now allow a special district to sell or otherwise convey real property.

Special districts, where not otherwise regulated by their enabling legislation, are authorized to exercise their own discretion to determine what terms, conditions, and methods to employ in exercising the power to sell or dispose of surplus real property.

AGO 2006-46 – DUAL OFFICEHOLDING

Members of the Commission for the Transportation Disadvantaged are officers for purposes of Article II, section 5(a), Florida Constitution, and cannot simultaneously hold that office and any other office under the municipal, county and state governments.

AGO 2007-06 – DUAL OFFICEHOLDING

Appointment to the Broward County Planning Council, as a county commissioner's nominee who is an elected municipal official of a municipality within the commissioner's district, would fall within the ex officio exception to the dual officeholding prohibition and would not violate Article II, section 5(a), Florida Constitution.

AGO 2007-14 – PUBLIC RECORDS

E-mails sent by city commissioners in connection with the transaction of official business that are intended to communicate, perpetuate or formalize knowledge of some type are public records even though such e-mails contain undisclosed or blind recipients

and their e-mail addresses and are subject to disclosure in the absence of a statutory exemption.

Section 119.021(2), Florida Statutes, provides for the Division of Library and Information Services of the Department of State to adopt rules governing retention schedules and a disposal process for public records. The division has promulgated rules for the retention of electronic records. The procedures within any given agency, however, for responding to a request for public records, consistent with the statutory mandates established in Chapter 119, Florida Statutes, are matters that must be resolved by that agency.

AGO 2007-13 – GOVERNMENT IN THE SUNSHINE LAW

Two county commissioners who are also board members for a regional planning council may take part in council meetings and express their opinions without violating the Government in the Sunshine Law. However, these officials should not discuss or debate these issues with one another outside the Sunshine as either county commissioners or a regional planning council members.

AGO 2007-15 – PUBLIC RECORDS

A written request for confidentiality under section 288.075(2), Florida Statutes, which requires an economic development agency to keep information concerning plans of a private corporation to locate or expand business activities in this state, may constitute or contain information required to be held confidential under that statute. However, the custodian of these records must determine on a case-by-case basis whether a particular record or portion of a record falls within the scope of the exemption. Further, section 288.075(2), Florida Statutes, may be cited by the records custodian as statutory authority for withholding information from public inspection and copying under the Public Records Law without violating the required confidentiality provisions of the statute.

GOT 20 YEARS?

Are you thinking about becoming a
Certified State and Federal Government and Administrative Practice lawyer?

Do you have 20 years of experience as a government or administrative lawyer?

Stop thinking, and start applying! The deadline for the final class of "grandfather clause" applicants is Halloween, October 31, 2007.

DON'T TURN INTO A PUMPKIN!

Get your application in before October 31, 2007
For more information, call Zina at (850) 561-5768.

The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

PRSR - STD
U.S. POSTAGE
PAID
TALLAHASSEE, FL
Permit No. 43

