ADMINISTRATIVE LAW SECTION
Newsletter
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From the Chair

By Stephen C. Emmanuel

The Section has had a terrific quarter thanks to the time and effort of many members and committees who work to make it all happen.

In July, the Section hosted a reception in honor of the Division of Administrative Hearings new Chief Judge Pete Antonacci. More than 80 people, including 10 administrative law judges, gathered at the Governor's Club in Tallahassee and provided a warm welcome to Judge Antonacci.

The Division of Administrative Hearings held its Second Annual DOAH Trial Academy in September, after a one-year gap due to COVID restraints. The Trial Academy is an intensive trial skills course designed to provide younger attorneys the opportunity to develop their trial proficiencies. It is the brainchild of Deputy Chief Judge and former Section Chair Brian Newman, who again led the effort this year. Thirty-seven members of our Section attended and earned 42 CLE credits over the course of the week. If you are interested in sharpening your trial skills, consider applying for the 2022 Academy.

Our signature event of the year, the Pat Dore Administrative Law Conference, was held on October 14-15. It is a considerable undertaking for the steering committee, who organize the two-day event, and our speakers, and once again was a resounding success. More than 80 people attended in person at the University Club, an outstanding venue, and we were also able to accommodate several virtual attendees. A special thank you to Administrative Law Judges Li Nelson, Gar Chisenhall, Suzanne Van Wyk, who served on the steering committee, and Judge Cathy Sellers, the chair of the steering committee, for planning this event.

Our Young Lawyers Committee, chaired by Brittany Dambly and Tabitha Jackson, remains very active and arranged several events over the past several months, including a Back-to-School backpack and school supply drive held at Happy Motoring. They also hosted a Thanksgiving food drive to provide meals for students over the fall break, when they do not have access to school breakfast or lunch programs. Check the Section's website for details on how you can help with future events.

On a sad note, retired Administrative Law Judge Linda Rigot passed away in September. Judge Rigot moved to Tallahassee in 1980, where she was an Administrative Law Judge at the Division of Administrative Hearings until 2010. Judge Rigot was an active leader of the Section and was honored in a special ceremony in 1996 where Governor Lawton Chiles recognized "her leadership as Chair of the Administrative Law Section of The Florida Bar and her personal hard work securing support for the bill creating the modern Administrative Procedure Act." The Section extends our condolences to her family, friends and colleagues.

I hope you were able to participate in some of our Section's events, if not in person, then virtually. Our Section has a number of CLE and social events in the planning stages. Check the website for events and activities scheduled for 2022.

Our membership is the key to our ongoing success as a Section and our Membership Committee, chaired by Gigi Rollini, has implemented a number of initiatives to retain and grow our membership. The best recruitment is your endorsement at your firm or agency.

Our Section is active and always open to new ideas. If you are interested in becoming more involved, contact me or anyone on the Executive Committee and we will help make the connection.

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Appellate Case Notes

By Melanie Leitman, Tara Price, Robert Walters, Gigi Rollini and Larry Sellers

Administrative Finality

Buchanan v. Dep't of Health, 322 So. 3d 238 (Fla. 1st DCA 2021).

The Department of Health (DOH) filed an administrative complaint against a chiropractor (Buchanan) based on the allegation that he improperly allowed one of his subordinates to operate an x-ray machine on patients. Buchanan and DOH entered into a settlement agreement to resolve the administrative complaint, wherein Buchanan waived his right to an administrative hearing, accepted discipline, and agreed not to appeal the final order. A final order was entered adopting the settlement agreement.

Buchanan moved to modify the final order for purposes of clarification, which was granted. After entry of the modified final order, Buchanan filed a motion to vacate the final order on due process grounds tied to the original proceeding and raised for the first time after the modified final order was entered. DOH denied the motion.

On appeal, the court affirmed DOH's final order based on the doctrine of administrative finality, which permits a decision, once final, to be modified only if there is a significant change in circumstances or if modification is required in the public interest, noting that entry of the modified final order "did not breathe new life into issues" not addressed in the original proceeding.

Direct Review of Emergency Rule—Availability of Attorney's Fees

Sch. Bd. of Miami-Dade Cty. v. Dep't of Health, 46 Fla. L. Weekly D2185 (Fla. 3d DCA Oct. 6, 2021).

The School Board of Miami-Dade County (School Board) filed a petition for review of Department of Health (DOH) Emergency Rule 64DER21-12. The School Board challenged the portion of the rule that provides that "students may wear a mask or facial coverings as a mitigation measure," but schools must "allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask." This emergency rule was repealed, and DOH adopted a new Emergency Rule 64DER21-15.[1] DOH therefore sought dismissal, contending the initial petition was now moot. The School Board opposed dismissal, contending collateral legal consequences—namely, attorney's fees—warrant a retention

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of jurisdiction and a decision on the merits.

The court noted that ordinarily when a challenged rule is repealed, the question of its validity becomes moot. That is because, under these circumstances, a judicial determination can have no actual effect. An exception to this general rule arises, however, where "collateral legal consequences that affect the rights of a party flow from the issue to be determined." This exception is narrowly applied to those cases in which a party stands to lose property, advantages, or rights as a collateral result of the dismissal. Other courts have recognized that the entitlement to attorney's fees may constitute such a collateral legal consequence.

The court reviewed the applicable statute, section 120.595(3), Florida Statutes, noting that it authorizes the recovery of attorney's fees in challenges to existing agency rules pursuant to section 120.56(3) and (5), Florida Statutes. These statutes in turn provide procedures for administrative determinations of the invalidity of the rule, and they therefore differ from procedures under section 120.68, Florida Statutes, where district courts review emergency rules without an intervening administrative challenge.

In this case, the School Board did not challenge the emergency rule pursuant to the administrative procedures described in section 120.56. Instead it sought direct judicial review pursuant to section 120.68. As such, the court concluded that section 120.595(3), did not authorize the award of attorney's fees in this case. Accordingly, the court determined that the repeal of the emergency rule rendered the case moot, and it dismissed the petition.

Public Records

City of St. Petersburg v. Dorchester Holdings, 46 Fla. L. Weekly D2277 (Fla. 2d DCA Oct. 20, 2021).

Dorchester Holdings, Inc. (Dorchester) initially filed suit against the City of St. Petersburg (City) for breach of contract. After the breach of contract suit was filed, Dorchester's attorney sent a public records request to the City Clerk pursuant to chapter 119, Florida Statutes, the Florida Public Records Act (Act). The City Clerk provided Dorchester's attorney with a preliminary advance cost estimate in the amount of $6,154.95, for which payment would be required before the documents could be produced. Subsequently, the City Clerk advised Dorchester's counsel that the estimated cost to review the documents for exemptions would be $256,571.71. Dorchester's attorney responded to the final estimate by narrowing the search terms. The City Clerk then advised Dorchester's attorney that the revised estimated final cost with the narrowed search terms would be $27,555.03.

Dorchester filed suit against the City, claiming that the City unlawfully refused to permit public records responsive to Dorchester's request to be inspected or copied. The trial court entered an order which agreed that the City's cost estimate for the production of records was unreasonable and therefore constituted a violation of Dorchester's right to inspect or obtain copies of public documents under the Act. The City appealed.

On appeal, the court held that the Public Records Act requires a records custodian to determine whether the requested records exist, locate the records, and review each record to determine if any of those records are exempt from production. If the nature or volume of the requested records requires the extensive use of information technology resources or clerical or supervisory assistance, the Act permits the agency to charge a special service charge to cover these costs, and the City's preliminary estimate regarding this charge must be paid in advance.

After enumerating the substantial correspondence and attempts the City made to either narrow the search or explain the legitimate bases on which the City was permitted to charge the costs conveyed to Dorchester to satisfy the request, the court reversed the trial court's order. The court concluded that the trial court erred in holding that the City's prepayment request constituted an unlawful interference with Dorchester's right of access to public records, and remanded for further proceedings.

Public Records and Sunshine Laws—Application to Private Entities

Holifield v. Big Bend Cares, Inc., 326 So. 3d 739 (Fla. 1st DCA 2021).

Edward Holifield appealed the trial court's entry of summary judgment in favor of Big Bend Cares, Inc. (Big Bend), which concluded that Big Bend had not violated the open records and meetings requirements of chapters 119 and 286, Florida Statutes.

Big Bend is a private organization that primarily treats HIV/AIDS patients in Florida's Big Bend area. Big Bend contracted with the Florida Department of Health (DOH) to receive reimbursements for providing certain services in the community. In addition, Big Bend received revenue from federal programs administered by DOH and grant money from the City of Tallahassee to pay for a portion of Big Bend's treatment facilities' construction. In light of the above, Mr. Holifield claimed that Big Bend was subject to chapters 119 and 287, Florida Statutes, and brought suit against Big Bend for various alleged infractions.

Mr. Holifield alleged that Big Bend violated chapter 119 because it refused to provide records showing the dates, times, and places of future board meetings. He argued that under *News & Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992), Big Bend was subject to chapter 119 because it contracted with DOH to facilitate the performance of DOH's duties. The trial court disagreed and concluded that under the totality of non-exhaustive factors cited by the *Schwab* court, Big Bend was not acting on DOH's behalf. Mr. Holifield appealed.

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The court affirmed the trial court's ruling, noting that, *inter alia*, DOH did not delegate any decision-making authority to Big Bend, nor did DOH regulate or otherwise control Big Bend's professional activity or judgment. Moreover, no governmental entity created Big Bend, and the revenue Big Bend received from DOH was a reimbursement for services Big Bend had already provided.

The court concluded that *Schwab* was inapplicable in a chapter 286 analysis. The court noted that a private entity is instead subject to the Sunshine Law where a public entity has delegated to the private entity its public purpose. Here, because no public purpose was delegated to Big Bend, it was not subject to and did not violate the Sunshine Law. Thus, the court affirmed the trial court's grant of summary judgment in favor of Big Bend on all counts.

Service of Administrative Complaint—Failure to Timely File Request for Hearing—Equitable Tolling

Rodriguez v. Dep't Bus. & Prof'l Regulation, 326 So. 3d 796 (Fla. 3d DCA 2021).

Rodriguez appealed from a final order of the Construction Industry Licensing Board (CILB) finding that he violated various provisions of chapter 489, Florida Statutes.

The agency filed an administrative complaint against Rodriguez, a general contractor, alleging that, among other things, he abandoned a construction project. The complaint was forwarded to Rodriguez's last known address of record by means of certified mail, as well as regular mail and e-mail. After the certified mail was returned unclaimed, the agency left a message at Rodriguez's last known telephone number, posted a notice on the front page of its website, and sent notice by e-mail to all newspapers of general circulation and news departments of broadcast network affiliates in six counties, including the county of Rodriguez's last known address.

Rodriguez failed to respond, and the agency requested the entry of a finding that he waived his right to dispute the material facts alleged in the complaint by failing to seek a formal hearing within 21 days after receiving notice. The Board granted the request, determined he committed the charged violations, placed him on probation, and assessed an administrative fine and restitution.

On appeal, Rodriguez argued that the failure to provide him with actual notice of the administrative complaint deprived him of due process and, alternatively, he invoked the doctrine of equitable tolling to excuse his noncompliance with the 21-day time limit.

Section 455.275, Florida Statutes, governs the service of an administrative complaint. Under that statute, initial attempts of service are to be made by regular and certified mail, as well as by e-mail, if possible, at the licensee's "last known address of record." In the event these methods fail to yield proof of service, the agency must take certain additional actions, including calling the last known telephone number of record and causing a short, plain notice to the licensee to be posted on the front page of the agency's website. It also must send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address.

The court noted that the final order reflected that service of the administrative complaint was made upon Rodriguez by certified mail, but the certified mail went unclaimed. Accordingly, the court determined that the agency complied with the additional statutory safeguards by engaging in telephonic communication and effectuating constructive notice.

Rodriguez also sought to invoke the doctrine of equitable tolling to avoid his obligation to respond to the allegations in the administrative complaint within 21 days. In response, the court reversed and remanded for an evidentiary hearing on the limited issue of whether equitable tolling applies to excuse Rodriguez's failure to request a hearing to dispute the material facts alleged in the complaint against him. Alternatively, the court held that the agency may elect not to afford Rodriguez a hearing on his equitable tolling claim and instead accept his factual allegations as true and allow a hearing to contest the factual allegations of the administrative complaint.

Standard for Review of Hearing Officer Determinations

Dep't of Agric. & Consumers Servs. v. The Henry & Rilla White Found., Inc., 322 So. 3d 716 (Fla. 1st DCA 2021).

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The Florida Department of Agriculture and Consumer Services (FDACS), the agency responsible for administering federally funded school lunch programs, sought to recover more than $13 million for meals that The Henry and Rilla White Foundation (Foundation) provided to Department of Juvenile Justice (DJJ) facilities between 2014 and 2020.

FDACS contended that the services the Foundation provided to DJJ were not eligible for the funding received because the DJJ facilities the Foundation served were operated by for-profit businesses and the Foundation was not the governing body for those facilities. FDACS also claimed the Foundation had a conflict of interest with the for-profit providers it hired to provide meals.

The matter went to hearing, and the hearing officer sided with the Foundation as to its eligibility. On appeal, FDACS argued it was error for the hearing office to conclude the Foundation's services were eligible for funding and that there was no conflict of interest.

The court noted that a final determination is clothed with a presumption of correctness. Noting no deference was to be given pursuant to article V, section 21, of the Florida Constitution, the court conducted a de novo review of the hearing officer's conclusions, and reviewed the findings for competent, substantial evidence in the record. Under that standard, the court concluded that the Foundation met the eligibility requirements. The Foundation operated with the permission and approval of FDACS and DJJ during the relevant period, and materially relied upon state and federal guidance to do so.

The court also rejected the suggestion of a conflict of interest by the Foundation, determining that FDACS presented no preserved argument to demonstrate otherwise.

Standing—Failure to Demonstrate "Adversely Affected"

Donovan v. City of Destin, 322 So. 3d 227 (Fla. 1st DCA 2021).

As background, appellants initiated administrative proceedings against the City of Destin, the Department of Environmental Protection, the U.S. Army Corps of Engineers, and Okaloosa County, to challenge permits granted by and to the named governmental parties for the purpose of dredging navigation channels and depositing the dredge spoil at a designated site, which was not on or adjacent to the property of the appellants. The Department of Environmental Protection (DEP) entered a final order adopting the ALJ's finding that appellants lacked standing to challenge the permits, and DEP approved the permits.

On appeal, the court consolidated the appeals and dismissed them for lack of standing. The court specifically found that the appellants failed to demonstrate through competent, substantial record evidence that they were adversely affected by the challenged orders. The court looked to *Martin County Conservation Alliance v. Martin County*, 73 So. 3d 856, 862–64 (Fla. 1st DCA 2011) (explaining that to have standing on appeal, a party must demonstrate that it is adversely affected by the decision at issue and that mere speculation regarding future adverse impacts is insufficient), and *Florida Industrial Power Users Group v. Graham*, 126 So. 3d 1056, 1056 (Fla. 2013) (dismissing for lack of standing because appellant "did not demonstrate that it is adversely affected by the [a]ppellee's decision and does not cite to competent, substantial evidence in the record supporting this position"), to support dismissal of the appeals.

Standing—Unadopted Rule Challenges

Calder Race Course, Inc. v. SCF, Inc., 326 So. 3d 777 (Fla. 1st DCA 2021).

Calder Race Course, Inc. (Calder) appealed a final order concluding that the Department of Business and Professional Regulation (DBPR) engaged in unadopted rulemaking when it renewed Calder's slot machine gaming license for the 2019-2020 fiscal year.

Pursuant to section 551.114(4), Florida Statutes, slot machine gaming areas are required to be located within the live gaming facility or in a building that is contiguous and connected to the live gaming facility. In 2016, Calder demolished a seven-story stadium that sat patrons who could watch the horseracing track and bet on the races at designated terminals. This left an open-air area with outdoor seating from which patrons could watch the races that was connected to Calder's slot machine building by a concrete walkway.

After DBPR renewed Calder's slot machine gaming license for the 2019-2020 fiscal year, SCF, Inc. (SCF), a company that breeds horses, filed a petition with the Division of Administrative Hearings (DOAH). SCF alleged that DBPR, in renewing the license, was following an unadopted rule because Calder's slot machine gaming area was no longer contiguous and connected to the live gaming facility after the demolition of Calder's stadium.

The ALJ issued a final order concluding that SCF had standing to bring the unadopted rule challenge and that DBPR had acted pursuant to unadopted rules. Calder and DBPR appealed the final order.

On appeal, the court held that SCF lacked standing to bring the unadopted rule challenge to DBPR's renewal of Calder's license. Although SCF alleged that it had standing because the demolition of Calder's stadium would result in a diminishment and reduction of Calder's pari-mutuel handle, the court held that no evidence showed that the renewal of Calder's license would cause SCF any actual or likely harm and SCF's allegations that Calder might suffer a diminished financial injury were speculative. In addition, the zone of interests protected by section 551.114(4) did not include SCF's interests as a horse-breeding company.

Because SCF lacked standing to bring the unadopted rule challenge, the court held that it need not

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address the merits of SCF's petition and reversed the final order.

Statutory Construction

Alvarez v. State Bd. of Admin., 326 So. 3d 730 (Fla. 5th DCA 2021).

A former Florida Department of Agriculture and Consumer Services (FDACS) economist, who subsequently began employment with the University of Central Florida, appealed a final order from the State Board of Administration (SBA) denying his request to transfer his Florida Retirement System (FRS) Investment Plan balance into the State University System Optional Retirement Program (SUSORP). The economist challenged SBA's denial and was set for an informal hearing.

SBA took the position that the economist could not "participate in" both the Investment Plan and the SUSORP at the same time because to do so would involve multiple state-administered contribution plans. SBA's position was that the economist would be eligible for the SUSORP only if he was in the Pension Plan (a defined benefit plan) rather than the Investment Plan (a defined contribution plan). SBA opined that the economist would have to exercise his second election to enter the Pension Plan at a cost of $41,000, but because he would not have been vested yet, he would have effectively forfeited any benefit.

The hearing officer rejected the agency's interpretation of the statute, which provided only that a participant could not receive contributions from more than one plan at a time, and contained nothing requiring the economist to convert to the Pension Plan. The hearing officer concluded the economist was automatically enrolled in SUSORP. SBA entered a final order rejecting her conclusions of law, and substituted its statutory interpretation maintained at hearing instead.

On appeal, the court determined that the statute granting automatic enrollment into SUSORP was unambiguous, and nothing in statute would require the economist to convert to the Pension Plan. The court reversed, holding that the agency improperly interpreted unambiguous statutory language, and remanded for further proceedings.

Sunshine Law—Textbook Committee was Required to Hold Public Meetings with Reasonable Notice

Fla. Citizens All., Inc. v. Sch. Bd. of Collier Cty., 328 So. 3d 22 (Fla. 2d DCA 2021).

Pursuant to statute and school board policy, the Collier County School Board (School Board) created a textbook committee to make decisions about the instructional materials that each class in the school district would use. The textbook committee reviewed textbooks, ranked them, eliminated some from consideration, and recommended one textbook for use in each class subject. These recommendations were then voted on by the School Board. Florida Citizens Alliance, Inc. (Citizens Alliance) alleged that the textbook committee met in closed sessions without proper public meeting notices. Citizens Alliance complained that this process constituted Sunshine Law violations because Floridians were unable to view the process by which certain textbooks were selected over others.

Citizens Alliance sued the School Board on a number of grounds, including the alleged Sunshine Law violations. The School Board moved to dismiss and the trial court granted the motion, dismissing the Sunshine Law violations on the basis that Citizens Alliance lacked standing. Citizens Alliance appealed.

With regard to the alleged Sunshine Law violations, the court concluded the trial court erred by dismissing the claim for lack of standing. The court noted that the Sunshine Law gave Citizens Alliance standing "without regard to whether [Citizens Alliance] suffered a special injury." The court then examined the School Board's actions with regard to Citizens Alliance's Sunshine Law claim.

First, the court concluded that the textbook committee was subject to the Sunshine Law because it was not simply filling a fact-finding or advisory role, but rather had been delegated decision-making authority with regard to the selection of textbooks. Where advisory committees present structured recommendations and eliminate alternative choices or rank selections for the final government authority, those advisory committees are required to be open to the public. Although the School Board had the final vote, the textbook committee helped "crystalize the [School Board's] decision" and thus was required to give the public reasonable notice of its public meetings.

Next, the court concluded that the textbook committee did not provide reasonable notice, as required by the Sunshine Law. Although the Sunshine Law does not define what constitutes "reasonable notice," the court concluded that the textbook committee's notices were unreasonable. Public notices for the textbook committee's meetings were scattered among and buried within multiple webpages on the school district's website, and the notices never mentioned that the meetings were open to the public. Thus, the textbook committee had violated the Sunshine Law through its failure to give the public reasonable notice of its meetings.

Finally, the court concluded that the School Board's votes to approve the textbooks failed to cure the textbook committee's Sunshine Law violations because the School Board's meetings in adopting the textbook committee's recommendations were not independent, final action in the sunshine. The School Board approved 36 textbooks within 30 minutes and was not authorized to independently select another textbook from those considered by the textbook committee. Because no full and open hearings were held on the textbook selection process, the School Board's meetings did not cure the textbook committee's Sunshine Law violations.

The court reversed the trial court's dismissal of Citizens Alliance's Sun-

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shine Law claim and remanded the case back to the trial court.

Taxpayer Challenge—Tax Exemptions Strictly Construed—Exceptions Required to Preserve Challenge for Appeal

Bayfront HMA Med. Ctr., LLC v. Dep't of Revenue, 325 So. 3d 250 (Fla 1st DCA 2021).

Bayfront HMA Medical Center, LLC (Bayfront) initiated administrative proceedings to challenge sales and use taxes assessed by the Department of Revenue (DOR) on the rent payments Bayfront paid to its landlord. Bayfront asserted that it was exempt from the taxes at issue because its inpatient rooms were "used exclusively as dwelling units" under section 212.031(1)(a)2., Florida Statutes, and its rent payments qualified as tax exempt "sales for resale" under rule 12A-1.039(1)(b)4.–5., Florida Administrative Code, because Bayfront leases its patient space from its landlord for subsequent licensing to patients.

After a formal administrative hearing, the ALJ issued a recommended order with both findings of fact and conclusions of law, including that "Bayfront maintains the sole control and full use of its leased space" and, as such, "there is no applicable tax exemption under Florida law." The agency adopted the ALJ's findings of fact and conclusions of law in the final order, and Bayfront appealed the final order.

On appeal, the court noted that those paragraphs and matters in the recommended order to which Bayfront did not file exceptions resulted in the failure to preserve those issues for appeal, citing *Worster v. Department of Health*, 767 So. 2d 1239, 1240 (Fla. 1st DCA 2000) (holding that "a party cannot argue on appeal matters which were not properly excepted to or challenged before the agency").

The court also held on the merits that "Bayfront failed to show that DOR misinterpreted or misapplied section 212.031, Florida Statutes, or rule 12A-1.039(1)(b), Florida Administrative Code, which requires "strict compliance" with the rule to entitle a taxpayer to an exemption."

The court therefore affirmed, finding no ground to set aside the final order under section 120.68(7)(d) or (7)(e), Florida Statutes.

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Endnotes

1 The School Board also filed a petition for review of the new emergency rule, 64DER21-15. *Sch. Bd. of Miami-Dade Cty. v. Dep't of Health,* No. 3D21-1971. On November 8, 2021, the court directed the petitioner to show cause why the petition should not be dismissed as moot based on the Division of Administrative Hearings' final order issued on November 5, 2021. That final order upheld the challenged emergency rule, concluding that the petitioners failed to prove that the emergency rule is an invalid exercise of delegated legislative authority. That final order is the subject of an appeal to the Fourth District Court of Appeal. *See Sch. Bd. of Miami-Dade Cty. v. Dep't of Health,* No. 4D21-3175 (notice of appeal filed November 5, 2021).

DOAH Case Notes

By Gar Chisenhall, Matthew Knoll, Dustin Metz, Paul Rendleman, Tiffany Roddenberry, and Katie Sabo

Bid Protests

Zayo Group, LLC v. Sch. Bd. of Polk Cty., Case No. 21-1708BID (Recommended Order Sept. 17, 2021; Final Order Oct. 12, 2021).
https://www.doah.state.fl.us/ALJ/searchDOAH/docket.asp?T=10/22/2021%205:51:30%20PM

FACTS: The School Board of Polk County ("School Board") issued a request for proposals ("RFP") seeking a contract for leased fiber to deliver wide area network ("WAN") communication services throughout the school district. Price quotes were sought for services provided on a 60-month term with up to five additional 60-month renewal options. During the initial 60-month contract, the winning vendor was expected to construct, install, and then maintain a "lit" fiber network for the School Board's exclusive use. The School Board would then lease the "lit" fiber network from the vendor for the length of the contract. Thereafter, the School Board and the winning vendor could agree to renew the WAN Services Contract for up to five additional 60-month periods. The District received timely proposals from five vendors, including Zayo Group, LLC ("Zayo") and WANRack, LLC ("WANRack"). After the School Board recommended that WANRack receive the award, Zayo initiated a protest and submitted a protest bond in the amount of $54,000 based on one percent of the initial contract term. The School Board "summarily dismissed" Zayo's protest explaining that the "bond posted did not meet the statutory requirements." Zayo challenged the School Board's summary dismissal in circuit court and later at the Second District Court of Appeal, where a provisional stay "to permit the parties to resolve the issue of the sufficiency of the protest bond and for the Department to enter an order of final agency action" was issued.

OUTCOME: Zayo was required under the School Board policy to submit a protest bond in "an amount equal to one percent (1%) of the estimated contract amount. The estimated contract amount shall be based on the total contract price submitted by the protestor or as otherwise defined in state law." Zayo asserted that the "total contract price" that should be used to calculate the one percent bond should be based only on the price Zayo quoted for the initial 60-month contract term. The School Board argued that the "estimated contract amount" should have been based on the full price Zayo proposed for both the initial contract, as well as all five 60-month renewal options. The ALJ concluded that the "clearest interpretation of the RFP" was that the "estimated contract amount" for the WAN Services Contract should be based on the price Zayo quoted for the first 60-month contract since the winning vendor was not entering a 360-month/30-year contract. The five renewal periods were not automatic or guaranteed and were expressly contingent on the future availability of funds to the School Board. The ALJ further concluded that the School Board's decision to award the contract to WANRack was not contrary to its governing statutes, rules, or policies, or the solicitation specifications, and he recommended that the School Board enter a final order dismissing the Zayo's protest and awarding the contract to WANRack. The School Board issued a final order adopting the ALJ's recommendation.

Heavy Civil, Inc. v. Fla. Dep't of Transp., Case No. 21-0950BID (DOAH Recommended Order July 29, 2021; FDOT Final Order Aug. 30, 2021).
https://www.doah.state.fl.us/ROS/2021/21000950.pdf

FACTS: This was a bid protest of a proposed contract award by the Florida Department of Transportation ("Department"). Under the relevant solicitation, any interested bidder was required to submit a bid proposal as well as a proposal guaranty or "bid bond" by the date and time identified in the solicitation. The original of any paper bid bond was required to be sent to a designated "mail stop" address in the Department's Contracts Administration Office ("Contracts Office") on or before the proposal deadline.

Heavy Civil, Inc. ("Heavy Civil") timely submitted a proposal. Instead of sending its bid bond to the Contracts Office, Heavy Civil sent the bid bond to the Department's central building address without identifying a specific recipient within the Department or the relevant mail stop number for the Contracts Office. When the bid bond arrived at the Department's central mail room, given the failure to include a specific recipient, the package went through a number of different hands and departments. Although the Department's mail room received the bid bond before the proposal deadline, the Contracts Office did not receive Heavy Civil's bid bond until after the deadline had passed and the notice of intent to award had been posted.

The Department's review and contract awards committees held public meetings at which it was determined that Heavy Civil's proposal was nonresponsive due to the failure to submit a bid bond. Ultimately, the Department issued a notice of intent to award the contract to Russell Engineering, Inc. The day after the notice of intent to award was posted, a Heavy Civil employee saw the notice and immediately called the Contracts Office to inquire why Heavy Civil's bid was deemed nonresponsive. It was then that both Heavy Civil and the Department learned what had become of the bid bond.

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Heavy Civil timely protested the Department's determination that its proposal was nonresponsive.

OUTCOME: The ALJ found that the Department's decision to award the contract to Russell Engineering, Inc., was not clearly erroneous, contrary to competition, arbitrary, or capricious, and recommended that the Department uphold the award. The ALJ found that the solicitation specifications were clear that the Contracts Office had to receive any paper bid bond by the proposal deadline, and Heavy Civil's failure to follow the solicitation instructions and ensure timely delivery of the bid bond rendered its proposal nonresponsive. The ALJ reasoned that while the Department's employees could have investigated and found the proper office to where the bid bond should have been delivered, it was not their responsibility to do so. Rather, it was Heavy Civil's responsibility to review and follow the solicitation instructions and ensure the bid bond made it to the correct recipient. The ALJ also found that the failure to timely provide the bid bond was not a mere clerical or typographical error as the bond requirement is a statutory one. The Department adopted the recommended order in full.

Nat'l Chem. Lab., Inc. v. Broward Cty. Sch. Bd., Case No. 21-1530BID (Recommended Order Sept. 8, 2021). https://www.doah.state.fl.us/ROS/2021/21001530.pdf

FACTS: Florida Administrative Code Rule 6A-1.012(6) provides that in lieu of requesting competitive solicitations from three or more sources, "district school boards may make purchases at or below the specified prices from contracts awarded by other [governmental entities] when the proposer awarded a contract by another entity defined herein will permit purchases by a district school board at the same terms, conditions, and prices (or below such prices) awarded in such contract, and such purchases are to the economic advantage of the district school board." The arrangement described in rule 6A-1.012(6) is known as a "piggyback" purchase and enables an agency to make purchases from competitive solicitations or contracts already awarded by another public agency. On March 10, 2021, the Broward County School Board ("School Board") approved the purchase of floor cleaning and stripping products from a contract awarded to Pro-Link by PAEC, a regional consortium service organization created by the district school boards of Bay, Calhoun, Franklin, Gulf, Holmes, Jackson, Liberty, Walton, and Washington counties. On March 24, 2021, National Chemical Laboratories, Inc.

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("NCL") filed a formal written protest of the aforementioned purchase, and the School Board referred NCL's protest to DOAH.

OUTCOME: As a preliminary matter, the ALJ rejected the School Board's argument that DOAH had no jurisdiction over a protest to the piggyback contract. In doing so, the ALJ noted that the School Board is an agency subject to the Administrative Procedure Act. The ALJ also concluded that NCL satisfied the traditional standing test by demonstrating that: (a) the purchase at issue would result in an injury-in-fact; (b) the injury was of sufficient immediacy to justify a hearing; and (c) the injury was of the type the pertinent law was designed to protect. As for the law governing the use of piggyback contracts, the ALJ noted that *Accela, Inc. v. Sarasota County*, 993 So. 2d 1035, 1042 (Fla. 2d DCA 2008), sets forth several guiding principles to consider when assessing a challenge to a piggyback contract and took special note of the criteria that the terms and conditions of the existing contract must be substantially similar to those of the existing contract. Ultimately, the ALJ found that NCL failed to demonstrate that: (a) the School Board's actions were contrary to its governing statutes, rules, policies, or the RFP's specifications; or (b) the School Board's decision to make piggyback purchases from the contract awarded to Pro-Link by PAEC was clearly erroneous, arbitrary, capricious, or contrary to competition.

Phosphorous Free Water Solutions, LLC v. S. Fla. Water Mgmt. Dist., Case No. 21-1794BID (Recommended Order August 19, 2021; Final Order Sept. 17, 2021).
https://www.doah.state.fl.us/ROS/2021/21001794.pdf

FACTS: The South Florida Water Management District ("District") issued a Request for Bids ("RFB") on February 26, 2021, seeking to contract for the removal of total phosphorus within the District's S-191 Basin. Section 1.7 of the RFB prohibited bidders from contacting any District employees other than the District's contract specialist from the release of the RFB through the end of the 72-hour period following the District's announcement of its intended award. On May 14, 2021, the District announced that it intended to award the contact to Ferrate Solutions, Corp. ("Ferrate Solutions"). The only other entity that responded to the RFB, Phosphorous Free Water Solutions ("Phosphorous Free"), protested the award and petitioned for a formal administrative hearing. Phosphorous Free's counsel learned during the discovery process that Dr. Anna Wachnicka, the District's lead scientist and project manager, and Whitney Waite, Ferrate Solutions' business manager, had been communicating via their personal cell phones during the period prohibited by section 1.7 of the RFB. One text message exchange on April 30, 2021, pertained to the RFB bond and concluded with Dr. Wachnicka sending thumbs up, fingers crossed, and raised hands emojis. Another text message exchange on May 13, 2021, included a statement from Ms. Waite that a legal challenge would be forthcoming if Ferrate Solutions was not awarded the contact. Dr. Wachnicka's use of thumbs-up and smiling face emojis indicated that the decision to award the contract to Ferrate Solutions was a "done deal."

OUTCOME: In the course of recommending that the District enter a Final Order finding that Ferrate Solutions is not a responsible bidder, the ALJ concluded that "the text communications and contact between Dr. Wachnicka and Ms. Waite during the prohibited period create an appearance of and opportunity for favoritism; erode public confidence that contracts are awarded equitably and economically; cause the procurement to be unfair; and are contrary to the bid specifications." The District rendered a final order ruling that Ferrate Solutions is not a responsible bidder, rescinding the proposed award to Ferrate Solutions, and awarding the contract to Phosphorous Free Water Solutions.

Substantial Interest Proceedings—Equitable Estoppel

City of Fruitland Park v. Dep't of Mgmt. Servs., Div. of Ret., Case No. 20-0644 (Recommended Order Aug. 25, 2021).

FACTS: The Department of Management Services, Division of Retirement ("Department") administers the retirement program for state and local government employees. All state agencies participate in the Florida Retirement System ("FRS"), and local governments have the option of joining the plan if they meet certain requirements. On February 1, 2015, the city of Fruitland Park ("City") joined FRS as a participating employer. All employees hired after the effective date were required to join FRS, unless their position was designated as senior management. On August 3, 2015, the City hired Michael Fewless as its Chief of Police. Prior to becoming the City's Chief of Police, Mr. Fewless was employed by an FRS employer and participated in the Deferred Retirement Option Program ("DROP"). Although the City knew Mr. Fewless was retiring from an FRS employer, the City did not designate the Chief of Police as a senior management position. After consulting with the Department and the City about what impact his new position might have on his existing retirement, Mr. Fewless determined he was a member of an alternative retirement program and could maintain his FRS retirement. In 2018, the Department audited the City's retirement account and determined that Mr. Fewless should be an FRS participant and was thus violating the DROP program provisions. Accordingly, the Department voided Mr. Fewless's DROP participation and retirement benefit payments, and required him to repay his DROP payout and retirement payments. After reaching a settlement with Mr. Fewless, the Department moved to recoup the DROP payment and retirement benefit payments from the City.

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OUTCOME: The ALJ concluded that the City was responsible for all benefits paid to Mr. Fewless. Section 121.091, Florida Statutes, provides that a DROP participant may be employed only by an employer that does not participate in a state-administered retirement system. Section 121.021, Florida Statutes, also provides that the participant and the employer are subject to repayment. As stated by the ALJ, the City was clearly a participant in FRS at the time it hired Mr. Fewless. The ALJ further concluded that the Department was not equitably estopped from seeking payment from the City because the elements associated with an equitable estoppel claim were not present. For instance, the statements upon which the City could rely were made to Mr. Fewless rather than to the City. In addition, a statement regarding how employment with the City would impact Fewless's retirement is a representation of law rather than one of fact.

Substantial Interest Proceedings —Hearsay

Corcoran v. Larkin, Case No. 19-5240PL (Recommended Order Oct. 11, 2021).
https://www.doah.state.fl.us/ROS/2019/19005240.pdf

FACTS: The Commissioner of Education ("Commissioner") issued an amended administrative complaint alleging that Michael Larkin had engaged in inappropriate conduct with high school students during the 2014-15 and the 2015-16 school years while he was employed as a teacher by the Palm Beach County School Board. During the course of an investigation of Mr. Larkin, Eulises Munoz, a detective with the Palm Beach County Police Department, had subpoenaed information and documents from Grindr, a popular adult mobile dating/social networking application. The Commissioner attempted to move documents from Grindr into evidence during the formal administrative hearing.

OUTCOME: In the course of recommending that the amended administrative complaint be dismissed, the ALJ determined that documents from Grindr could not be admitted into evidence under the business records exception to the hearsay rule. The ALJ found that while Detective "Munoz was able to verify that the documents constituting Petitioner's Exhibits 1, 2, and 3 were received from Grindr in response to the subpoena he served on Grindr, Munoz did not—and was unqualified to—attest that the photographs and chat logs were a fair and accurate representation of what they purported to be—i.e., records regarding the Grindr accounts for Grindr Guy, 28; Michael Shawn Larkin; the subscriber having phone number 561-351-4286; or the holder of" the email address in question. Instead, "[t]estimony by a person, such as a Grindr employee, having personal knowledge regarding the creation and storage of the documents is required to authenticate the documents." The ALJ also addressed the fact that the amended administrative complaint failed to cite the version of Florida Administrative Code Rule 6A-10.081 that was in effect when the conduct described in paragraphs 3 through 8 of the complaint allegedly occurred. Because the pertinent language in the aforementioned rule did not substantially change, the ALJ concluded that Mr. Larkin's defense was not prejudiced and there was no need to invalidate the allegations at issue.

Substantial Interest Proceedings—Licensure Renewal

Dep't of Child. & Families v. It's a Small World Acad., Inc., Case No 21-1467 (Recommended Order Aug. 17, 2021).
https://www.doah.state.fl.us/ROS/2021/21001467.pdf

FACTS: The Department of Children and Families ("the Department") licenses and regulates child care facilities in Florida, and It's a Small World Academy, Inc. ("A Small World") is a licensed child care facility in Miami. Section 402.308(1), Florida Statutes, requires that a child care facility's license be renewed annually, and Florida Administrative Code Rule 65C-22.001(1)(d) requires that a licensure renewal application "must be submitted to the licensing authority at least 45 days prior to the expiration date of the current license to ensure that a lapse of licensure does not occur." Because the Department's Miami office was closed to the public due to COVID-19, a Department employee advised A Small World that its renewal application should be mailed to the Department rather hand-delivered. With the submission deadline being October 9, 2020, A Small World mailed its application packet from a Miami post office to the Department's Miami office on October 1, 2020, by certified mail. During that timeframe, the Department's Miami office was completely closed for several days due to civil disorder, and a Department employee ultimately received A Small World's renewal application from the office mailroom on October 13, 2020. The Department issued an administrative complaint on February 1, 2021, seeking to impose a $50 fine because A Small World's renewal application was supposedly late.

OUTCOME: Because the Department's Miami office experienced closures due to COVID-19 and civil disorder, the ALJ ruled that the Department failed to prove by clear and convincing evidence that the renewal application was not received by October 9, 2020. The ALJ also ruled that "[t]he equities in this case lean in favor of [A Small World] who mailed the renewal application from Miami to [the Department's office] in Miami a week before it was due. Given the exceptional conditions of the time, it is patently unfair to penalize [A Small World]."

Substantial Interest Proceedings —Employment Discrimination

Johnson v. Uceda Sch. of Orlando,

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Inc., DOAH Case No. 20-4958 (Recommended Order Sept. 2, 2021). https://www.doah.state.fl.us/ROS/2020/20004958.pdf

FACTS: Matalyn Johnson applied for a teaching position at a school located on Kirkman Road in Orlando. Respondent operates a school named "Uceda School of Orlando, Inc." ("Uceda Orlando"), which is located on Semoran Boulevard. However, the school on Kirkman Road that rejected Johnson's application is operated by an entity named "Uceda OBT." Both schools are affiliated with an entity named "Uceda English Institute" ("UEI"), a chain of federally accredited schools wherein each school is separately owned, incorporated, and overseen by different administrators. UEI-affiliated schools have separate accounting records, bank accounts, lines of credit, payroll preparation, telephones, and offices. They also have different operating addresses, registered agents, officers and directors, and do not share employees or administrators. Johnson filed an Employment Complaint of Discrimination on April 20, 2021, alleging that Uceda Orlando did not hire her because of her disability and race. The parties stipulated that the threshold issue at hearing was whether Uceda Orlando was the "employer" that rejected Johnson's application.

OUTCOME: The ALJ concluded that Uceda Orlando was not the "employer" for discrimination purposes because there was no evidence that Uceda Orlando had any control over Uceda OBT. The ALJ further concluded that Johnson failed to establish the "single employer" theory of liability, which determines whether nominally independent entities are so interrelated that they constitute a single integrated enterprise. The factors are: (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control. In addition, Johnson failed to establish franchisor liability because there was no agency or employment relationship between Uceda Orlando and Uceda OBT.

Thomas v. Family Dollar, Case No. 21-1376 (Recommended Order Oct. 7, 2021). https://www.doah.state.fl.us/ROS/2021/21001376.pdf

FACTS: Family Dollar hired Quanesha Thomas for a second time on March 29, 2019, to work as a regular status, part-time customer service representative. Ms. Thomas became pregnant soon thereafter. On approximately December 3, 2019, Ms. Thomas requested paid time off or sick leave due to her pregnancy, and that request was denied a day later. No consideration was given as to whether Ms. Thomas was eligible for any other type of leave that was available to employees who were temporarily unable to work due to either a work-related or nonwork-related injury. Ms. Thomas submitted a second leave request on December 9, 2019, indicating she was not seeking to use paid time off or sick leave. Nevertheless, that request was also denied without any evaluation as to whether Ms. Thomas was eligible for any other type of leave available to employees who were temporarily unable to work due to either a work-related or nonwork-related injury. Because of complications related to her pregnancy, Ms. Thomas's last day of work at Family Dollar was December 20, 2019. However, Family Dollar was of the opinion that Mr. Thomas voluntarily quit her job. When Ms. Thomas sought to return to her previous position, Family Dollar required her to submit a new employment application and determined Ms. Thomas was disqualified from future employment because a background check revealed that she had been convicted on December 29, 2014, of misdemeanor domestic violence. Ms. Thomas filed a complaint of discrimination on October 12, 2020, with the Florida Commission on Human Relations alleging that Family Dollar committed an unlawful employment practice by discriminating against her based on sex.

OUTCOME: Under the framework established by the U.S. Supreme Court in *Young v. United Parcel Serv., Inc.*, 575 U.S. 206 (2015), for analyzing discrimination charges based on pregnancy, a petitioner sets forth a prima facie case of discrimination by demonstrating that: (a) she is a member of a protected class; (b) she requested an accommodation; (c) the employer refused her request; and (d) the employer accommodated others who were comparable to the petitioner regarding their ability or inability to work. As a pregnant woman, Ms. Thomas satisfied the first *Young* prong. The ALJ concluded that she also satisfied the second and third prongs because her requests for paid time off, sick leave, and/or unpaid time were accommodation requests that were rejected by Family Dollar. As for the fourth *Young* prong, the ALJ noted that Family Dollar allows employees who suffer a work-related injury to receive a realignment of job duties to assist in their recovery and return to normal work duties. The ALJ determined that Ms. Thomas satisfied the fourth *Young* prong because "[w]hile a non-pregnant, part-time worker who suffers a work-related injury that renders them temporarily unable to work is allowed a period of 'recovery' under Respondent's policy, a pregnant worker who suffers from a temporary inability to work for reasons related to her pregnancy is not allowed a similar period of 'recovery.' Since neither employee is able to work, they are similar in their 'inability to work' during their respective periods of temporary disability." The ALJ also determined that Ms. Thomas had been unlawfully terminated in December 2019 and should not have been required to reapply to Family Dollar once she was cleared to return to work by her physician. Accordingly, the ALJ recommended that Ms. Thomas receive back-pay and an offer to be reinstated to a position equivalent to her previous position.

Unadopted Rule Challenges

Positive Behavior Support v. Agency for Health Care Admin., Case No.
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21-1789RU (Final Order of Dismissal July 23, 2021). https://www.doah.state.fl.us/ROS/2021/21001789.pdf

FACTS: Positive Behavior Support ("PBS") is the largest provider of behavioral analysis services in Florida. Florida Administrative Code Rule 59G-4.001 adopts by reference the Florida Medicaid Provider Reimbursement Handbook ("the Handbook"), and Rule 59G-4.132 requires that Medicaid providers of home health services submit reimbursement claims to the Agency for Health Care Administration ("AHCA") via the Electronic Visit Verification system ("the EVV System"). AHCA is in the process of requiring behavioral analysis service providers to use the EVV System, and the EVV System is currently being utilized in a pilot region covering several counties. PBS provides behavioral analysis services in the pilot region and filed a rule challenge, alleging that AHCA was utilizing two unadopted rules via the EVV System. According to PBS, AHCA was violating the Handbook by denying reimbursement for "clean claims" and preventing resubmission of those claims.

OUTCOME: Section 120.56(4), Florida Statutes, requires that unadopted rule challenge petitions allege that: (a) the object of the challenge is an agency statement; and that (b) the statement at issue amounts to an unadopted rule. The ALJ noted that PBS did not allege in its rule challenge petition that AHCA's position is that clean claims submitted through the EVV system shall be denied and that claims resubmitted through the EVV system shall be rejected. Instead, PBS alleged that AHCA mistakenly believes that problems with the EVV system had been resolved. "But accepting [PBS]'s allegations as true that AHCA is mistaken in its beliefs does not transform those mistaken beliefs into statements of policy that are the opposite of what AHCA mistakenly believes." Accordingly, the ALJ dismissed PBS's rule challenge with prejudice because it had failed to allege that agency statements were at issue. PBS has appealed that ruling to the First District Court of Appeal.

Law School Liaison

Florida State University College of Law Fall 2021 Update

By Erin Ryan, Associate Dean for Environmental Programs and Director of FSU Center for Environmental, Energy, and Land Use Law

The U.S. News and World Report (2022) has ranked Florida State University as the nation's 18th **best Environmental Law Program**, tied with Tulane University, and ranked 7th among environmental law programs at all public universities nationwide. Below highlights the activities and events of FSU Environmental Law Certificate Program, and list recent faculty scholarships.

Student Spotlight

We are delighted to report that our FSU Law's Student Animal Legal Defense Fund (SALDF) has been named 2021 Student Chapter of the Year by the national Animal Legal Defense Fund. The award recognizes an Animal Legal Defense Fund chapter that has shown incredible efforts in advancing the field of animal law and advocating for animals through original projects and initiatives. SALDF had an extremely successful 2020-2021 year, creating an advanced animal law course and a skills-training based schedule for real-world experience in animal law, hosting guest speakers, and more.

Catherine Awasthi, 3L, won first place in the Ninth Annual Animal Law Writing Competition with her article, "Ecological Emergency: Mass Manatee Mortalities and the Race to Save Florida's Marine Mammal." The competition was organized by the FSU Student Animal Legal Defense Fund, The Florida Bar Animal Law Section, and Pets Ad Litem. Catherine was also selected as a recipient of the 2021 Law Student Achievement Award from The Florida Bar Animal Law Section.

Macie Codina, 3L, is externing as a certified legal intern with the Florida Department of Environmental Protection. According to Codina, "Being an extern at the Florida Department of Environmental Protection has been an amazing learning experience! It is hard to think of a better opportunity to learn and apply environmental and administrative law than being on the front lines of the DEP. In my time at the DEP, I have been fortunate enough to deal with a broad array of cases including air and water quality, hazardous water, and challenges to various permits. There is always something exciting happening in the office and they are extremely flexible with my schedule. 10/10 would recommend!"

Alumni Highlights

- Legal Writing Professor Tricia Matthews teaches Legal Writing and Research I and II, as well as Animal Law. She is the faculty advisor for the Animal Legal Defense Fund, FSU College of Law Chapter, which was named the national Chapter of the Year Award in 2014, 2018, and 2021. Professor Matthews is also active as a member of The Florida Bar Animal Law Section, and previously served as its law school liaison.
- Adjunct Professor Gary Perko is teaching Land Use Regulation at FSU College of Law this 2021 Fall Semester. Professor Perko spent the last 30 years practicing with Florida's premier environmental and land use law firm. In his class, students will learn about the substantive and procedural requirements that land use lawyers must follow to help client obtain or challenge approvals of development projects, including revisions to comprehensive plans, re-zonings, development orders and agreements, special use permits, variances, and exceptions.

Faculty Achievements

- Professor Shi-Ling Hsu has a forthcoming publication which includes *Whither, Rationality,* in 120 Mich. L. Rev. __ (2021).
- Associate Dean Erin Ryan has a forthcoming publication called *The Twin Environmental Law Problems of Preemption and Political Scale*, in Environmental Law, Disrupted (Keith Hirokawa & Jessica Owley, eds., 2021).
- Dean Emeritus Donald Weidner has a forthcoming publication, *The Unfortunate Role of Special Litigation Committees in LLCs* (Spring 2022).

Fall 2021 Distinguished Lecture

Alexandra Klass, Distinguished McKnight University Professor of the University of Minnesota, presented the Fall 2021 Distinguished Environmental Lecture entitled "The Role of Private and Public Lands in the U.S. Clean Energy Transition" on October 27, 2021. Professor Klass teaches and writes in the areas of energy law, environmental law, natural resources law, tort law, and property law. She is a Member Scholar at the Center for Progressive Reform, a Fellow at the University of Minnesota's Institute of the Environment, and in 2020 was named to the Governor's Advisory Council on Climate Change.

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Fall 2021 Enrichment Lectures

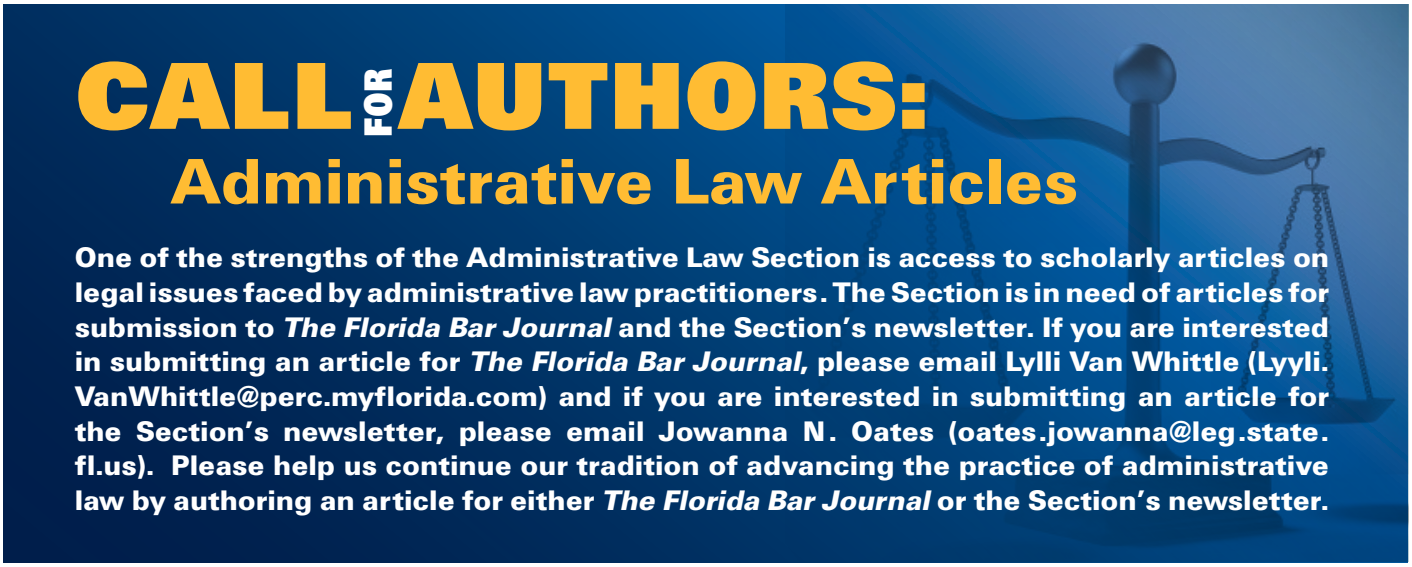
Erica Lyman, Clinical Professor of Law and Director of the Global Alliance for Animals and the Environment at Lewis & Clark Law School, gave a virtual lecture titled "Wildlife Trade and Zoonotic Disease Risk," which covered regulatory options and pandemic-related policy regarding the relationship between humans and animals. Please see link should you be interested in the recording: https://vimeo.com/619149673/80b41001fd

Jeff Chanton, Robert O. Lawson Distinguished Professor at Florida State University and an acclaimed climate scientist, gave an in-person lecture entitled "The History of Earth's Climate." Professor Chanton has done extensive work examining the causes of increased methane gas in the atmosphere and investigated the effects of the BP oil spill, including how methane-derived carbon from the spill entered the food web. Please see link should you be interested in the recording: https://vimeo.com/631352530/6eee279066

Tisha Holmes, an Assistant Professor at the Department of Urban and Regional Planning at Florida State University, delivered an enrichment lecture on November 10, 2021, at the FSU College of Law. Her research focuses on climate change and adaptation strategies in coastal zones and committed in promoting grassroots level capacities through community outreach and participatory engagement.

The Environmental Law Program will also be hosting a Carbon Tax Panel in Spring 2022, Distinguished Environmental Lecture by Michael Vandenbergh, the David Daniels Allen Distinguished Chair of Law at Vanderbilt Law School, a series of enrichment lectures (in-person and remote), and an education trip at the Edward Ball Wakulla Springs State Park. Information on upcoming events will be available at https://rb.gy/jyvrzd or reach out to Jella Roxas for more information (jroxas@law.fsu.edu). We hope Section members will join us for one or more of these events.

Attention Section Members! The Executive Council voted to create an Ad Hoc Bylaws Committee to review the Section's Bylaws and recommend potential changes to them if needed. The Committee would like your input as to what changes, if any, should be made. Please send your comments to Richard Shoop at Richard.Shoop@ahca.myflorida.com. The deadline for submitting comments is February 28, 2022.



Administrative Law Section

ADMINISTRATIVE LAW SECTION
MEMBERSHIP APPLICATION (ATTORNEY)
(Item # 8011001)

This is a special invitation for you to become a member of the Administrative Law Section of The Florida Bar. Membership in this Section will provide you with interesting and informative ideas. It will help keep you informed on new developments in the field of administrative law. As a Section member you will meet with lawyers sharing similar interests and problems and work with them in forwarding the public and professional needs of the Bar.

To join, make your check payable to "**THE FLORIDA BAR**" and return your check in the amount of $25 and this completed application to:

ADMINISTRATIVE LAW SECTION
THE FLORIDA BAR
651 E. JEFFERSON STREET
TALLAHASSEE, FL 32399-2300

NAME _____ ATTORNEY NO. _____

MAILING ADDRESS _____

CITY _____ STATE _____ ZIP _____

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Note: The Florida Bar dues structure does not provide for prorated dues. Your Section dues cover the period from July 1 to June 30.

For additional information about the Administrative Law Section, please visit our website:
http://www.flaadminlaw.org/