

Maryland State Bar Association
Administrative Law Section Council
Meeting Minutes
March 15, 2007

Location: Bar HQ, Baltimore

Present: ALJ Kathleen Chapman, Amanda Conn, Chief ALJ Tom Dewberry, Judge John Fader, Nathan Greenbaum, Judge Glenn Harrell, Judge Barbara Kerr Howe, former Chief ALJ John Hardwicke, Judge Joseph H.H. Kaplan, Elissa Levan, Bruce Martin, Michele McDonald, Susan Shubin, Jody Plymyer, Joel Smith, Ralph Tyler. Andrea Leahy was detained by traffic and was able to join us somewhat later.

Proceedings

Meeting called to order at 6:25 p.m. by Chairperson Michele McDonald.

I. Approval of Minutes

- Minutes from January 23, 2007 meeting approved, upon motion by Judge Howe.

II. Chair's Report

- There was a discussion of the Spring Dinner, at which Attorney General Gansler will be the featured guest. Registration is not at an optimal level. Suggestions were made to send notice by email to the State and Local Government Section and to the Employment Law Section. A question was raised as to whether electronic notice had gone out to the entire Section and the Committee will check. There was also discussion of creating a process by which people can donate tickets to law students, who might otherwise be unable to attend due to their limited budgets. Judge Fader is going to speak with Prof. Rochvarg about sources of donations. Susan Shubin suggested that we reserve funds in the budget next year for that purpose. A decision was made to prepare an amended invitation flyer to give recipients the option of paying for a ticket for a law student to attend.
- Michele noted the success of the February MICPEL program, which was well attended, and thanked the presenters, including particularly program chairs, Jody Plymyer, Kathleen Chapman and Andy Baida. MICPEL was very pleased with the creativity of the program. Judge Fader suggested a reprise of the program in a location such as Montgomery County.

III. Treasurer's Report

- Kathleen Chapman reported that we had an initial budget of \$3,539, of which \$3,328 was allocated to meals and \$211 to "other". The January meeting at D'Alesio's was somewhat expensive (\$390) and we have reserved \$500 each for potential expenses in

connection with the Spring Dinner and Annual Meeting. That would leave us with \$203 for the present (March 15) meeting and Kathleen is hopeful that we will not exceed that amount.

IV. IV. Committee Reports

Publications

- Elissa Levan reported that the newsletter has been published and posted to the website. Given the lateness of the publication, it was noted that we could either skip the next scheduled "guest editor", Bruce Martin, and go straight to Judge Dewberry or we could push both issues back. Bruce and Judge Dewberry agreed to work it out between them. Elissa solicited any articles that anyone may have written for other purposes on subjects related to Administrative Law to be posted on our website with the few articles that are already there. Jody Plymyer noted that we could add her article from January, 2006, Bar Journal to the webpage. [*Ed. Note: With the assistance of Janet Eveleth at MSBA, the article was posted amazingly quickly.*]
- There was a discussion of the possibility of including circuit court decisions applying administrative law, when they can be gathered and might be of general interest. Judge Fader indicated that we should contact Judge Harrell to discuss that possibility and coordinate any publication of circuit court decisions.

Public Education

- ALJ Yvette Diamond was unfortunately detained in traffic. Judge Dewberry noted the increasing numbers of requests for the *Branded: DUI* video, both locally and from jurisdictions across the country. He also noted that the video has been playing on Maryland Public Television. A suggestion was made as to whether it might be feasible to post the video clip on the YouTube website.
- Michele noted that anyone who has suggestions for new projects should communicate them to Yvette.
- Judge Dewberry noted that the programs at the Univ. of Maryland and Univ. of Baltimore law schools had been successful. The video was shown to both groups, which presentation was followed by a discussion of careers in administrative law-related fields.

Spring Dinner

- Anyone who has not signed up yet is urged to do so as registered attendance is not yet where it should be (see discussion under "Chair's report").

Legislation

- Bruce Martin briefed the Council on SB2 and SB 47. SB 47, the bill concerning judicial review of administrative decisions, was amended by the Senate so that the new bases for reversing a decision would only apply to employee termination and discipline. The three bases are abuse of discretion, failure to comply with agency rules, and failure to reasonably state the basis for the penalty or sanction. A meeting was held by the Chairman of the House committee considering the bill. Bruce was asked to present the opposition of the Administration and the OAG to the bill. AFSCME, Judge Fader and attorneys from Joel Smith's firm were there to support the bill. The House has not yet voted on the Senate bill or the House counterpart (HB 237).
- SB 2, which is the product of the General Assembly's Special Committee on State Employee Rights and Protections, was heavily amended and passed the Senate. It is now pending in the House. The amendments, suggested by the Administration, attempt to implement the intent of the bill and correct certain technical errors that would have inadvertently eliminated all at-will employment. One of the key goals accomplished by the bill is a requirement that the Secretary of Budget & Management designate for which special appointment positions personnel decisions may take into account political considerations. The designation is to be based on the Elrod-Branti constitutional standard. Provisions that would have allowed immediate appeals to court without exhaustion of administrative remedies and the recovery of attorneys' fees and costs by employees were removed.

Annual Meeting

- Michele confirmed that the Annual Meeting will be a joint Bench-Bar Conference. We have our usual Thursday morning slot on June 14, 2007 and there will be food. The program title is, "Gubernatorial Removal power -- Termination with Extreme Prejudice: The Ultimate Administrative Proceeding." Judge Wilner, with the assistance of Ed Pappenfuse, of the State Archives, will discuss the use of the executive removal power and will present a historical analysis. The presentation will include a discussion of Judge Kaplan's 1987 decision in the Maurice Dill matter, given that Judge Kaplan's decision is the most recent opinion on the subject.
- A motion was made by Judge Fader, seconded by Susan Shubin) to honor Judge Harrell for his many years of valuable service to the Section. The Motion carried unanimously. (Judge Fader noted that Judge Harrell is known as the "Prince of Footnotes".) Thoughts concerning appropriate ways to honor Judge Harrell should be sent to Laura McWeeney.

OAH

- Chief ALJ Dewberry reported on the quarterly meeting of the OAH Advisory Council and the empty seats that continue to exist following the loss of Mr. Hefer and Ms. Petzel. The process of filling those seats is moving slowly and Judge Dewberry will follow up with the legislature about appointments.
- V. New Business.
- We need a nomination for Treasurer for next year. Names should be given to Nathan Greenbaum by email, because we are not scheduled to have another meeting before the annual meeting in Ocean City, at which the nominees will be elected.
 - Michele noted under the heading, "Long Range Planning", that we need some interesting ideas for next year's meeting. She observed that it is never too early to plan another MICPEL program but no support was voiced for taking one on for the Fall.
- VI. Meeting adjourned at 8:45 p.m. Next meeting scheduled for June 14, at the Bar Convention in Ocean City.

These minutes were submitted by Elissa Levan.