

Department of Financial Services

Voters in 1998 approved a constitutional amendment combining the offices of the Treasurer and Comptroller of the State of Florida into the Office of the Chief Financial Officer. The Legislature implemented this constitutional change by, either directly or indirectly, consolidating the regulatory activities of the former Department of Insurance and former Department of Banking and Finance into the Department of Financial Services.

The result is an entity with approximately 2,700 employees that in some ways can be considered three agencies in one. Consider:

Tom Gallagher, as the elected Chief Financial Officer (CFO), is the agency head of the Department of Financial Services (DFS). The Financial Services Commission, which consists of the Governor; the Chief Financial Officer; the Attorney General; and the Commissioner of Agriculture, was established within the Department of Financial Services.

The Financial Services Commission itself has two offices: the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR).

The Commissioner of OIR is Kevin McCarty, and the Commissioner of OFR is Don Saxon. Each Commissioner is the agency head for purposes of the entry of Final Orders and other regulatory actions. The collegial Financial Services Commission is the agency head for purposes of rulemaking by both offices.

OIR is responsible for the regulation of risk bearing entities (insurance companies, HMOs, warranty companies, etc.), viatical providers, insurance administrators, and premium finance companies. The General Counsel of the OIR is Steve Parton. OIR has 19 attorneys on staff.

OFR is responsible for the regulation of financial institutions, securities dealers, consumer lenders, and mortgage brokers and lenders. The General Counsel of the OFR is Robert Beitler. OFR has 26 attorneys on staff.

With the exception of those activities now regulated by OIR, DFS is responsible for all regulatory activities previously performed by the Department of Insurance. DFS includes the Division of Agent and Agency Services, the Division of Consumer Services (which includes the Bureau of Funeral and Cemetery Services), the Division of Insurance Fraud, the Division of Rehabilitation and Liquidation, the Division of Risk Management, the Division of State Treasury, the Division of State Fire Marshal, the Division of Workers' Compensation and the Division of Accounting and Auditing (formerly in the Department of Banking and Finance). The General Counsel of DFS is Pete Dunbar. DFS has 45 attorneys on staff.

WHERE TO FILE PLEADINGS AND PUBLIC RECORDS REQUESTS

DFS

The General Counsel of DFS, Peter Dunbar, serves as the Agency Clerk for DFS. Physical address for filing documents with Agency Clerk is Larson Building, Room 612, 200 East Gaines Street, Tallahassee, Florida 32399-0333.

Legal process naming DFS should be served at the Service of Process Section, Larson Building Room 131, 200 East Gaines Street, Tallahassee, Florida 32399-0333 (phone 850/413-4102). Requests for public records held by DFS should be directed to Cornelia Collins, Document Processing Section, Larson Building Room 146, 200 East Gaines Street, Tallahassee, Florida 32399-0333 (phone 850/413-2622).

Approximately 80 percent of cases handled by DFS involve the APA.

OIR

The General Counsel of OIR, Steve Parton, serves as the Agency Clerk for OIR. Physical address for filing documents with Agency Clerk is Larson Building, Room 612, 200 East Gaines Street, Tallahassee, Florida 32399-0333

Legal process naming OIR should be served at the Service of Process Section, Larson Building Room 131, 200 East Gaines Street, Tallahassee, Florida 32399-0333 (phone 850/413-4102). Requests for public records held by OIR should be directed to Cornelia Collins, Document Processing Section, Larson Building Room 146, 200 East Gaines Street, Tallahassee, Florida 32399-0333 (phone 850/413-2622).

Approximately 80 percent of cases handled by OIR involve the APA.

OFR

All filings made with the OFR should be submitted to Mary Howell, Agency Clerk, Room 526 Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350. All public records requests should be directed to David Knoll, Bureau of Regulatory Review, Fletcher Building, 101 E. Gaines Street, Tallahassee, Florida 32399-0350 (phone 850/410-9862).

Legal process naming OFR should be directed to Robert Beitler, Esq., General Counsel, 526 Fletcher Building, 101 East Gaines Street, Tallahassee, Florida, 32399-0350, (phone 850/410-9896).

Between 80 percent and 90 percent of OFR's cases involve the APA.

If you could change the APA...

We asked if the general counsels of DFS or OIR would like to see any changes to the APA. Don Dowdell, a veteran attorney with the former Department of Insurance who now is housed within DFS responded as follows:

The DFS feels that the language in 120.57(1)(l), which provides that the agency final order may only reject or modify conclusions of law or interpretations of administrative rules over which it has substantive jurisdiction, should be amended.

For example, if an ALJ makes a clearly erroneous conclusion of law regarding a provision of the Evidence Code, the agency should be able to reject the conclusion. I don't think the agency's authority to appeal its own order adopting an erroneous conclusion of the law has been completely resolved.

*While not involving any provision in Chapter 120, we feel it would be beneficial for the courts to clarify whether agencies can, in administrative proceedings, address constitutional issues not involving the constitutional validity of statutes, as appears to be suggested in the case of *Communications Workers of America v. City of Gainesville*, 697 So. 2d 167 (Fla. 1st DCA 1997).*

We asked Robert Beitler what changes he would like to see to the APA, and he responded as follows:

[T]he one area that I believe needs clarification and refinement are the laws regarding rulemaking. In order to afford equal protection of the law, an agency must have generally applicable policies that afford similar treatment to similarly situated individuals. Another general principle is that an agency cannot have a policy that is not reduced to a rule. But one cannot promulgate a rule without specific rulemaking authority. Complicating matters is the definition of a "rule," which includes any form that "solicits any information not specifically required by statute or by an existing rule." This has all become a hyper-technical minefield. Here is one example: OFR has clear authority to conduct investigations. But in 2002 we were determined to have engaged in "nonrule policy" because we used the same form letter to make inquiries of four license applicants. This cost us \$50,000 in attorney fees, but does not seem to have provided any real benefit to the public, the applicants (one of whom challenged our actions), or the party who did challenge our action.

DFS General Counsel Bio

Peter Dunbar is the General Counsel for CFO Tom Gallagher at DFS. He is a former member and past Chairman of the Ethics Commission. He holds both a bachelor's and law degree, with honors, from Florida State University. Mr. Dunbar served as General Counsel and Director of Legislative Affairs for Governor Bob Martinez and as Chief of Staff during the transition between the Martinez and Chiles administrations in 1990. He served 10 years in the Florida House of Representatives, and he is the former Pasco County Attorney and former General Counsel for Tampa Bay Water. He was a partner in the Pennington, Moore, Wilkinson, Bell & Dunbar firm in Tallahassee prior to joining DFS, and served as legislative counsel for the Real Property, Probate and Trust Law Section of The Florida Bar.

OIR General Counsel Bio

Steve Parton is the General Counsel of OIR. He has been in the legal department of OIR, and its predecessor, the Department of Insurance for many years. He earned his law degree from FSU College of Law in 1974.

OFR General Counsel Bio

Robert Beitler, OFR's general counsel, has worked as an attorney in state government since 1986. Before his appointment as OFR's General Counsel in January 2003, he served as General Counsel to the Department of Banking and Finance, and previously in several other legal positions with that agency. Mr. Beitler earned his law degree from Florida State University in 1981 and his bachelor's degree from Rutgers University in 1978.

Special thanks to DFS attorney Don Dowdell for gathering the information for this snapshot.