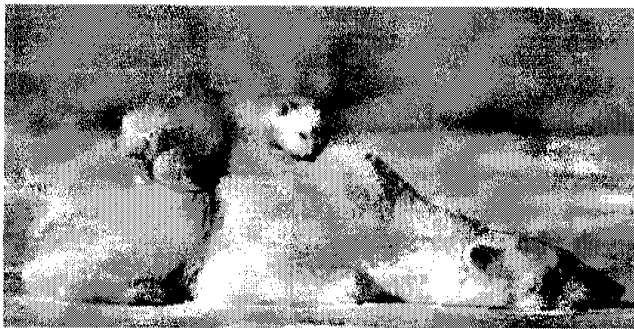


News from the South Carolina Administrative and Regulatory Law Association

SCARLA Goes WILD for 2003 Seminar!

WE'RE GOIN' TO THE ZOO! Yes folks, in their constant striving to bring you the best in administrative law education and entertainment, the SCARLA board is proud to announce that the 2003 seminar will be held at Riverbanks Zoo in Columbia on September 26. This great event offers outstanding speakers on cutting edge topics, 7 hours of CLE credit, lunch, and hey, it's free admission to the zoo! The Annual Education Seminar and Meeting is a great opportunity to hear about the latest and greatest topics in administrative law, and it's a great chance to meet and network with others in the field.

Among the speakers this year we are honored to have South Carolina Chief Justice Jean Toal and Julian Mann, Chief Administrative Law Judge for North Carolina. Practicing experts in administrative law will speak on topics such as the effect of bankruptcy in administra-



Not just another sleepy CLE!

tive cases, the Charleston property tax controversy, and the latest legislation. Two hours of ethics credit is included.

The Seminar will be held in the Education Center at Riverbanks Zoo, with possible breakout sessions being held on the covered patio outside. A buffet lunch is included in the cost, and will be at the Ndoki Lodge which overlooks the elephant area. Zoo staff will treat us to an animal demonstration during lunch. **Space is limited to 200 participants so make sure you sign up early!** See you at the zoo!



From the President *Judge Marvin "Buddy" Kittrell*

The year is moving along so quickly that it is hard to believe our third annual conference is around the corner in September. This year's conference brings together leaders from the executive, legislative and judicial branches of our government who will speak on very timely issues. With this year's location, it should also be a fun time and a great opportunity to make new contacts in the administrative law community and learn something new in the field.

As we journey through the remainder of this year and into next year, I hope each of you will be thinking of ideas, issues, and new cases that can be the subject of an article for this newsletter. Our members are a diverse mixture of individuals from all areas of state and local government and from several professions and occupations. Each of us has some interesting bit of information to offer. It might be about something unusual that happened in a case you were involved in or how the case was handled by the court or various judges.

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Your Name Could Be Here!

Submit an article for publication in the SCARLA News! We welcome contributions from members on any topic related to administrative law. Whether it is a scholarly article, a remark about a recent case, or a comment on legislation, please send it in.

SCARLA Speaker Profile: Judge Julian Mann

Chief Judge Mann will be a guest speaker at the 2003 seminar

Julian Mann has been Chief Administrative Law Judge and Director of North Carolina's Office of Administrative Hearings since 1989; he is Codifier of Rules for the State of North Carolina (Publisher of the *North Carolina Register and North Carolina Administrative Code*) and from 1974 to 1989 was an administrative law practitioner in Raleigh, North Carolina (General Legal Counsel - North Carolina Board of Architecture, North Carolina Veterinary Medical Board and American Association of Veterinary State Boards). He is an Adjunct Professor at North Carolina State University in Administrative Law, Business Law, Regulatory Law, and Construction Law. He is a former chairman of the Administrative Law Committee of the North Carolina Bar Association. He received his B.S. from the University of North Carolina, his M.P.A. from North Carolina State University, and his J.D. from Samford University. In 1998, he served as President of the National Association of Administrative Law Judges (NAALJ). He is a member of the Central Panel Directors Conference and is active in many other professional and community associations. He has written numerous articles and is a frequent CLE presenter on such legal subjects as administrative law, special education, due process and mediation.



WANTED

SCARLA Newsletter Editor

Due to our current editor moving on to greener pastures, there is an opening for a bright and motivated individual to assume the role of newsletter editor for SCARLA. Pay is limited and hours long. Ability to write and spell correctly preferred, but not required

From the President *Judge Marvin "Buddy" Kittrell*

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President's Column
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Maybe the case could have been handled or prepared differently. We all get tired of the question so often posed: "What is administrative law?" It is easy to define a general jurisdiction court which hears tort, contract and criminal matters. We need to further define who we are so we can better inform and educate both the public and elected officials about our role. This newsletter can be a great tool for furthering administrative law

SCARLA Legislative Update
-May 12, 2003

By Steve Bates and Jana Shealy

The 2003 regular session of the South Carolina General Assembly is winding down while legislators continue to debate the budget and consider new revenue sources. To allow enough time to pass an appropriations bill and give the General Assembly an opportunity to address any vetoes, it may be necessary to extend the regular session beyond its mandated June 5 *sine die* adjournment date. Other issues that may get acted upon in the final weeks of the session include predatory lending, campaign finance, Public Service Commission reform, DMV restructuring, and property rights.

Of the twenty-three acts that have already become law this year, the following relate to administrative or regulatory law:

Act No. 6 (R11, H3344) -- Broadband wireless service exempted from regulation by the public service commission. Effective March 12, 2003

Act No. 9 (R26, S71) -- Filing date extended for armed forces or national guard members serving near a hazard zone to file property taxes. Effective April 21, 2003

Act No. 12 (R33, S340) -- Retirement Systems Claims Procedures Act. (See Act for Effective Date)

Act No. 17 (R42, S508) -- Judges required to grant continuance in case when a party or his attorney is on active duty as member of reserves. Effective April 21, 2003

Of the bills ratified and awaiting action by the Governor, S. 419, (R68) is noteworthy as it revises § 44-7-170, relating to exemptions from DHEC's Certificate of Need and Health Facility Licensing Act for offices of licensed private practitioners.

Some bills of interest that are currently pending include:

S. 643. Requires an appeal from an agency, board, commission, or ALJ decision be accompanied by an appeal bond. SC Code Ann. §1-23-380 would be amended to require that the agency establish a bond amount on any appeal to circuit court (except for the LLR where the ALJD will set the bond amount).

H. 3273. Provides that a regulation not approved by the 120-day requirement of §1-23-120 or by joint resolution within two years must be re-filed as a new regulation. The APA requires that an agency submit to the House and Senate any proposed regulation (after being published in the State Register, etc.) and that members of the General Assembly then have 120 days to accept, reject, propose changes, etc. to the proposed reg. Currently, if the General Assembly takes no action, the regulation is adopted and published in the State Register as final.

H 3235. Changes the name of the ALJD to "Administrative Law Court." This Bill has passed the House and awaits action by the Senate Judiciary Committee.

H 4047. Relates to the exemption of municipalities from certain regulation by the PSC.

H 3865. Minor revisions to the Revenue Procedures Act.

H. 3768 / H. 3770. S.C. Health and Human Services Reorganization and Accountability Act of 2003.

S. 121. Health Licensing Act affects the Certificate of Need Program in relation to DHEC. No action since mid-January.

H.3378. Appeals currently heard by the State Board of Education transferred to the Administrative Law Judge Division. Recommitted to House Education Committee on May 14, 2003.

Because 2003 is the first year of a two-year legislative session, all legislation pending at the conclusion of this year carries over to 2004 and maintains its place in the legislative process.

SUPREME COURT DENIES WRIT OF PROHIBITION

By Elizabeth M. Crum

In the case of MedQuest Associates, Inc. v. South Carolina Department of Health and Environmental Control, and InMed Diagnostic Services of SC, LLC, Docket No. 03-ALJ-07-0007-CC, the Supreme Court was presented with the issue of whether an "affected person" under the State Certificate of Need and Health Licensure Act (CON Act) has the right to a hearing from a non-applicability determination (NAD) in a situation where there is no express right of review of the NAD, i.e., you have the right to appeal an NAD within 10 days of the decision. While this case deals with the CON Act, its holding should be applicable to agency determinations involving licensure matters involving the private rights of a person.

MedQuest petitioned for administrative review of the Department of Health and Environmental Control's (DHEC) decision to issue an NAD that the purchase of the assets of an imaging company, including an MRI unit, did not require Certificate of Need review. InMed moved to dismiss the petition asserting that the Administrative Law Judge Division (ALJD or Division) did not have jurisdiction to hear the matter because the ALJD is a statutory court of limited jurisdiction and no statute or regulation authorizes the court to review DHEC's NAD decision. InMed contended instead that MedQuest should have sought a declaratory ruling under S.C. Code Ann. § 1-23-150(a) (1986). MedQuest opposed the Motion and DHEC took no position before the ALJD. Judge Anderson denied the Motion to Dismiss and InMed filed a Petition for Writ of Prohibition in the original jurisdiction of the South Carolina Supreme Court requesting that the ALJD be prohibited from exercising jurisdiction in the case alleging the Division did not have subject matter jurisdiction.

In addition to the arguments raised before the ALJD, InMed contended that the case is not a "contested case" under the Administrative Procedures Act (APA) and challenged the Division's conclusions that the NAD decision was a "license" and that S.C. Code Ann. § 1-23-600(B) (Supp. 2002) and 25 S.C. Code Ann. Reg. 61-72 § 201.A (Supp. 2002) conferred jurisdiction to hear the contested case. InMed additionally challenged the Conclusion that even if the matter were not a contested case, the Division had the authority to hear the matter pursuant to S.C. Const. art. I, § 22. InMed contended that: 1) the matter is not a contested case; 2) MedQuest has no due process right to a hearing on an NAD; and 3) even if MedQuest had a due process right to notice and hearing on the NAD decision, the Division had no jurisdiction to hear the matter. DHEC joined in InMed's Petition. In its Return to the Petition, MedQuest contended, inter alia, that: 1) the matter is a contested case because the NAD was a license as defined in the APA and the APA authorizes the ALJD to review licensure decisions; 2) due process under Art. I, § 22 affords MedQuest the right to an adjudicatory hearing because it affects MedQuest's private rights and it is a quasi-judicial determination; and 3) the appeal is properly heard before the ALJD and not the Circuit Court. MedQuest also argued that InMed had an adequate remedy by appeal and there was no emergency or other compelling reason for issuance of the writ in the Supreme Court's original jurisdiction. On April 23, 2003, the Supreme Court dismissed the Petition on the ground that it "will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance" and there was "no compelling reason to entertain this matter in the Court's original jurisdiction," This case is not proceeding to hearing.

InMed was represented by Hamilton Osborne, Jr. and James Y. Becker, Haynsworth, Sinkler Boyd, P.A.; MedQuest was represented by M. Elizabeth Crum and Leigh S. Watson, McNair Law Firm, P.A.; and DHEC was represented by Nancy L. Roberts.

SCARLA 2003 Educational Seminar and Annual Meeting
Friday, September 26, 2003
Riverbanks Zoo

SCARLA's Education Committee has developed a tentative agenda for the Third Annual Educational Seminar and Annual Meeting. The event will be held on Friday, September 26, 2003 at the Riverbanks Zoo. Several very high profile speakers are scheduled to participate including Chief Justice Jean Toal and North Carolina Chief Administrative Law Judge Julian Mann III. The meeting should be an excellent opportunity for SCARLA members to network with each other while learning about administrative law issues. Chief Administrative Law Judge Marvin F. "Buddy" Kittrell, President of SCARLA, will preside.

8:15 – 8:45	Registration
8:45 – 9:00	Welcome and comments – S. C. Chief Administrative Law Judge Marvin F. ("Buddy") Kittrell, President of SCARLA
9:00 – 9:45	Chief Justice Jean H. Toal, South Carolina Supreme Court
9:45 – 10:45	Henry B. Richardson, Jr., Office of Disciplinary Counsel
10:45 – 11:00	BREAK
11:00 – 11:30	Do's and Don'ts Before the ALJD Stephen P. Bates, Esq.
11:30 – 12:00	Nuts and Bolts of a Tax Appeals Case Jeffrey M. Anderson, Esq.
12:00 – 12:30	Due Process in the Administrative Process N. C. Chief Administrative Law Judge Julian Mann III
12:30 – 1:45	Annual Meeting/ Lunch
1:45 – 2:15	Bankruptcies- What Public Agencies Need to Know to Protect their Interests -E. Katherine Wells, Staff Counsel, DHEC
2:15 – 3:00	Administrative Issues in Worker's Comp Arena - H. Mills Gallivan, Esq.
3:00 – 3:30	Legislative Update– Representative James E. Smith, Jr.
3:30 – 3:45	BREAK
3:45 – 4:15	Charleston County Property Tax Cap - John C. Von Lehe, Esq. and Timothy Scott, Chairman, Charleston County Council
4:15 – 4:45	Health Law Issues – Cheryl H. Bullard, Esq., Susan A. Lake, Esq. and David B. Summer, Jr., Esq.

**Don't wait too late to register for the 2003 Seminar!
Space is limited!**

SCARLA Member News

SCARLA Member Profile: Malane Pike

Malane Pike has been active in SCARLA since its inception. She serves on its board in addition to holding the office of Vice President. Malane is a native of Chapin, South Carolina. She obtained a bachelors degree and a J.D. from the University of South Carolina. Upon graduating from the University of South Carolina School of Law in 1983, she continued her studies at Emory University School of Law, pursuing an LL.M. in Taxation. She received that degree in 1984.

After graduation, Malane entered private practice with the Atlanta accounting firm of Gifford, Hillegas, & Ingwersen. In 1987, she moved back to South Carolina and joined the South Carolina Tax Commission's newly formed Policy and Special Procedures Division as a Tax Analyst. In that position, she wrote many of the initial policy documents issued by that agency. In addition, she represented the Property Tax Division in appeals from manufacturers, airlines, railroads, car lines, and utilities before the three member tax commission. In 1995, the South Carolina Tax Commission was restructured and renamed South Carolina Department of Revenue. At that time, Malane joined the newly formed Revenue Litigation Section of SCDOR as a Counsel for Revenue Litigation. She remains in this position today, representing the Department of Revenue in all phases of tax litigation.

Malane is admitted to the South Carolina and Georgia Bar Associations. She is also licensed as a Real Estate Apprentice Appraiser and a Real Estate Broker.

Through court appointment, Malane serves on the Administrative Law Judge Division Rules Committee. She is a current member and past chair of the Administrative and Regulatory Law Committee of the South Carolina Bar and she also serves on the Bar's Practice and Procedure Committee. In addition, Malane is a member of the South Carolina Association of Assessing Officials and serves as Special Consultant to its Education Committee.

SCARLA Board Member Appointed as Interim Law School Dean

Congratulations to SCARLA Board Member Frank Mood on his appointment as the Interim Dean of the USC Law School! Frank practices with Haynsworth Sinkler Boyd, is the chairman of the SCARLA sponsorship committee, and also serves on the Board of Directors of the South Carolina Bar. The USC Law School has been looking for a dean for a while now, and Frank will guide them well through the transition phase. Good luck!

Please let us know if you or some other member has been recognized or honored for a role in the administrative law community!