

MINUTES OF THE MEETING

RULES COMMITTEE BOARD OF PILOT COMMISSIONERS

**Sea Turtle Inn
1 Ocean Boulevard
Atlantic Beach, FL 32233
January 12, 2006**

CALL TO ORDER

Commissioner Phipps, Chair of the Committee, called the meeting to order at 9:10 a.m.

Members Present

Commissioner Cheryl Phipps, Chair
Commissioner Richard Frudaker, Vice-Chair
Commissioner Eric Bryson
Commissioner Rivers Buford, Jr.
Commissioner Donald Molitor
Commissioner Victoria Robas

Others Present

Dennis Yecke, Deputy Secretary, DBPR
Rick Morrison, Director, Division of Professions
Robyn Barineau, Executive Director
Elise Rice, Government Analyst
Drew Winters, Prosecuting Attorney, DBPR
Mary Ellen Clark, Board Counsel
Commissioner Michael Buffington, Board Member
Commissioner John Fernandez., Board Member
Commissioner John Hiers, Board Member
Commissioner Eugene Sweeney, Board Member
Allen Thompson, Tampa Bay Pilots Association
Gretchen Rayborn, Executive Director, Florida State Pilots Association (FSPA)
Tim McGill, St. Johns Bar Pilots Association (SJBPA)
Jorge Viso, President, FSPA
Joe Brown, SJBPA
David de le Parte, Counsel for FSPA

Commissioner Phipps thanked Commissioner Buford, Commissioner Bryson, Commissioner Frudaker, David de la Parte and Mary Ellen Clark for attending the Rules Workshop in December.

APPROVAL OF THE MINUTES OF THE MEETING

September 29, 2005

MOTION: Commissioner Bryson made a motion that the Committee approve the minutes as submitted.

SECOND: Commissioner Robas seconded the motion and it passed unanimously.

Ms. Clark informed the Committee that the rules report was included in the agenda book. She stated that she included rules that became effective since the last meeting.

Ms. Clark stated that the rules in agenda book, Rules 61G14-11.010, 11.011, 12.001, 12.002 and 12.003, Florida Administrative Code (F.A.C.) were in connection with the rule for the spousal exemption for active duty. She stated that they were trying to address the concerns expressed by the Joint Administrative Procedures Committee (JAPC.) Ms. Clark stated that at the rules workshop in December, the Committee drafted rules to address the spouse's renewal issue and other areas of concern with any absence from active service. She stated that she took it upon herself to send an advance copy of the proposals that would be presented today to JAPC to get an advanced opinion. Ms. Clark stated that Ms. Suzanne Printy called her and stated that they had done good work on the rules, however, the Board did not have statutory authority for the proposed rules. Ms. Clark informed the Committee that JAPC was sympathetic to the situation, and had sent copies of the letters (in the handout folders) that were sent to the Senate and House from JAPC stating that there was a conflict between Chapter 310 and 455 because the Board of Pilot Commissioners cannot legally comply with the spouse's renewal directive of Chapter 455.02(2), F.S.

Ms. Clark informed the Committee that she recommended that the Committee withdraw the language previously proposed for Rule 61G14-12.003, F.A.C.

Commissioner Frudaker questioned what direction was being taken because of the letters that were sent to the Senate and House stating that the Board does not have the authority to create a rule addressing spouse's renewal and renewals in general, and wondered if they were suggesting that revisions need to be made to Chapter 310, Florida Statutes (F.S.), in order to comply. Ms. Clark responded that she thought that was the suggestion. She informed the Committee that the statutes for other professions were specific regarding the requirement to renew licenses, however, the statutes for Pilots do not specifically address renewal and, therefore, Ms. Printy is correct.

Commissioner Buford commented that boards have the authority to interpret statutory language and develop rules. He stated that active service needs to be

amended and changed to include the spouse's renewal rule, and he believed that they had the authority to do this.

Mr. David de la Parte, FSPA, commented that he participated in the drafting of the rules and agreed with Commissioner Buford that active service is not as defined as it could be. He stated however, that the definition has not caused difficulties in the past and given the different practices in each port, the FSPA would like to have time to contact the various associations for their input. Mr. de la Parte commented that another area of concern is sending proposals to JAPC, the proposal gets denied, and then they identify other problems. He felt they did not need to react too quickly to JAPC. He commented that all of the Rules were previously reviewed and the Board and Committee need to take time to digest the comments from JAPC. He was curious as to why JAPC believed the Board previously had statutory authority regarding renewal and why they no longer had this authority.

Mr. de la Parte asked for more time on the active service rule so that FSPA could solicit input from the various associations. He suggested that there needed to be caution in shipping rules to JAPC for review prior to a meeting that do not need to be addressed immediately.

Following discussion, Ms. Clark informed the Committee that the letters to the Senate and House were not a challenge to any of the existing rules. Commissioner Buffington commented that he would like to know who reviewed of the rules and statute in 2002, since there were no problems at that time.

Mr. de la Parte stated that the letters from Ms. Printy put in place the need for legislative changes, however, the committees will need more than the letters to initiate legislative changes, and you do not want to leave that to chance. He suggested that while the Committee was working on the rules, Ms. Clark send JAPC a letter thanking Ms. Printy for her concern advising her that they are reviewing her concerns, and the Board needs some additional time to explore the concerns she has raised. He suggested that copies be sent to the Department, the Senate and the House.

Commissioner Frudaker commented that he was not comfortable with the rule going to JAPC first. Ms. Clark informed the Committee that sending work in advance is not contrary to standard procedures and is something that a proactive attorney would do. Commissioner Frudaker stated that he thought it would have been better if she had waited and, perhaps, they might have received a different opinion.

Commissioner Bryson suggested that they be given time to digest the situation, receive feedback from FSPA and nothing else be sent to JAPC at this time.

Following discussion, the following action was taken.

MOTION: Commissioner Buford made a motion that the Committee direct Board Counsel to withdraw the August 2004 language proposed for Rule 61G14-12.003, F.A.C., the exemption for spouses of armed forces.

SECOND: Commissioner Robas seconded the motion and it passed unanimously.

MOTION: Commissioner Buford made a motion that the Agenda items resulting from the December Rules Workshop be tabled until the next meeting or special meeting of the Rules Committee.

SECOND: Commissioner Bryson seconded the motion and it passed unanimously.

Ms. Clark referred to Rule 61G14-19.001, F.A.C., she indicated that in September there was a reduction of the rate from 1% to .6%, effective in October. At the September meeting, the Board voted to reduce the amount again with an effective date of January 1. She stated that she could not make the rule effective on January 1, and it was going to be effective on January 8th. Ms. Clark stated that the rule could not be effective on January 1 because it had not been noticed for Rule Development after the change effective in October, thus a longer period of time was required between the vote and the ultimate effective date. Ms. Clark stated that the Committee would have to tell her at each meeting if they want the rule noticed for rule development.

Commissioner Buffington responded that it was understood that a standard procedure was for the rule to be noticed for rule development after each meeting because of the attempts to keep the cash balance at or near zero. He stated that regardless whether they make a change or not, there is always a potential for change. Commissioner Buffington commented that this had not been a problem previously.

Ms. Clark stated that the Committee would have to state at each meeting that they wanted the rule noticed for rule development. Commissioner Buffington responded that they had already stated that they wanted the rule noticed for every meeting.

Commissioner Phipps called a recess of the Rules Committee at 10:31 a.m. Commissioner Phipps called the meeting back to order at 11:16 a.m.

Commissioner Phipps informed the Committee that they needed to approve the proposed effective date of February 1 for the gross pilotage assessment of .25%.

MOTION: Commissioner Molitor made a motion that the Committee approve the change in the effective date for Rule 61G14-19.001, F.A.C., to February 1.

SECOND: Commissioner Bryson seconded the motion and it passed unanimously.

Commissioner Phipps reported that the Finance Committee proposed a change to Rule 61G14-19.001 F.A.C., to reduce the gross pilotage assessment to 0.1% effective May 1.

MOTION: Commissioner Robas made a motion that the Committee recommend to the full Board that Rule 61G14-19.001, F.A.C., be amended to change the assessment to 0.1% effective May 1, 2006.

SECOND: Commissioner Molitor seconded the motion and it passed unanimously.

Commissioner Phipps informed Ms. Clark that Rule 61G14-19 is to be noticed for development each meeting.

MOTION: Commissioner Molitor made a motion that Rule 61G14-19, F.A.C., be noticed for development each meeting.

SECOND: Commissioner Bryson seconded the motion and it passed unanimously.

ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 11:18 a.m.