



Angela Triplett

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Details for Case No: 13-001633RP

Judge: CASE NOT ASSIGNED TO AN ALJ**Petitioner:** FLORIDA ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS, INC., A FLORIDA CORPORATION
vs.**Respondent:** DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF INSURANCE AGENTS AND AGENCY SERVICES**Date Filed:** 5/2/2013**Last Docket Entry:****Location:** Miami, Florida**District:** Southern**Agency:** Department of Financial Services**Division:** Division of Insurance Agents and Agencies Services**Status:** Not Assigned ALJ.

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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

FLORIDA ASSOCIATION OF PUBLIC
INSURANCE ADJUSTERS, INC.,
a Florida Corporation,

Petitioner,

vs.

DOAH Case No. _____

STATE OF FLORIDA, DEPARTMENT
OF FINANCIAL SERVICES, DIVISION
OF INSURANCE AGENTS AND AGENCY
SERVICES,

Respondent.

_____ /

PETITION FOR ADMINISTRATIVE HEARING

COMES NOW, Petitioner, FLORIDA ASSOCIATION OF PUBLIC
INSURANCE ADJUSTERS, INC., a Florida corporation, by and through its
undersigned counsel, pursuant to Sections 120.56(1) and (2), 120.569, 120.57(1),
Florida Statutes, and Chapter 28, Florida Administrative Code (F.A.C.), and files
this, its Petition for Administrative Hearing (hereinafter the “Petition”),
challenging the validity of Proposed Rules 69B-220.051 and 69B-220.201, F.A.C.
(hereinafter the “Proposed Rule”), and in support thereof would state:

PARTIES

1. The agency affected by this Petition is the Department of Financial
Services, Division of Insurance Agents and Agency Services (hereinafter referred

to as the “Division”), whose address is The Larson Building, 200 East Gaines Street, Tallahassee, FL 32399-0320. The telephone number for the Division’s Office of General Counsel is (850) 413-2840. The Division is the agency promulgating the Proposed Rule.

2. Petitioner, FLORIDA ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS, INC. (“FAPIA”), is a Florida corporation whose business address is 1515 North Orlando Avenue, Suite A, Maitland, FL 32751, and whose telephone number is (407) 830-4892.

3. Petitioner’s representative for purposes of service of process in the instant case is the law firm of Brewton Plante, P.A., with its address at 225 South Adams Street, Suite 250, Tallahassee, FL 32301, telephone number (850) 222-7718, facsimile number (850) 222-8222 and email at wbrewton@bplawfirm.net and kbplante@bplawfirm.net. All pleadings and correspondence should be directed to the attention of Wilbur E. Brewton, Esquire, at the above address.

4. There is no known Division case number for this action.

5. The Division is promulgating amendments to Rule 69B-220.001, 69B-220.051, and 69B-220.201, F.A.C. The text of the Proposed Rule was published in Volume 39, Number 71, of the Florida Administrative Register, on April 11, 2013, as amended by the correction filed in Volume 39, Number 73, of the Florida Administrative Register. See, Exhibit A.

JURISDICTION

6. Pursuant to Section 120.56(2)(a), Florida Statutes, a substantially affected person may seek an administrative determination of the invalidity of a proposed rule twenty-one (21) days after publication of a Notice of the Proposed Rule. The Division of Administrative Hearings (“DOAH”) has jurisdiction to determine whether the Proposed Rule challenged herein is invalid pursuant to Section 120.56(2), Florida Statutes.

STATEMENT OF SUBSTANTIAL INTERESTS

7. Petitioner, FLORIDA ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS, INC. (“FAPIA”), is a Florida corporation duly authorized to conduct business in Florida. FAPIA’s purposes are:

(a) To organize the Public Insurance Adjusters of the State of Florida to better serve the interests of the insured citizenry of the State and to help facilitate the expeditious and proper handling of insurance losses and claims.

(b) To unite the Public Insurance Adjusters of the State of Florida for their mutual benefit, education and protection, as well as to benefit and protect the general public.

(c) To establish and maintain high standards of professional conduct and efficiency among its members, and to study and assist in carrying out the provisions of all laws and regulations pertaining to Public Insurance Adjusters that

may be enacted or formulated by the U. S. Government or by the Florida Legislature and Insurance Department of the State of Florida.

(d) To advance and protect the interests of its members, to promote their welfare, and to attain a spirit of helpful assistance and cooperation among its members.

(e) To become a source of consultation regarding industry issues for the Florida Department of Insurance.

The majority of FAPIA's membership are Florida licensed public adjusters. As licensed public adjusters in Florida, FAPIA's members are substantially affected by the Proposed Rules because the Proposed Rules purport to regulate the actions and conduct of Florida licensed public adjusters and impose procedures which impact the operation and management of the public adjuster profession in Florida, including the businesses owned by FAPIA's members.

ULTIMATE ISSUES OF FACT

8. Whether in promulgating the proposed amendments to Rule 69B-220.051(2)(f), F.A.C., the Division has exceeded its grant of rulemaking authority.

9. Whether the proposed amendments to Rule 69B-220.051(2)(f), F.A.C., enlarge, modify or contravene provisions of law implemented.

10. Whether the Proposed Rule amendments to Rule 69B-220.051(2)(f), F.A.C., are vague, fail to establish adequate standards for the Division's decisions, or vest unbridled discretion in the Division.

11. Whether the Proposed Rule amendments to Rule 69B-220.051(2)(f), F.A.C., are arbitrary or capricious.

12. Whether Proposed Rule 69B-220.051(2)(f), F.A.C., is an invalid exercise of delegated legislative authority pursuant to Section 120.52(8), Florida Statutes.

13. Whether there is a reasonable basis in law or fact for the Division's promulgation of proposed amendments to Rule 69B-220.051(2)(f), F.A.C.

14. Whether in promulgating the proposed amendments to Rule 69B-220.201(4)(b), F.A.C., the Division has exceeded its grant of rulemaking authority.

15. Whether the proposed amendments to Rule 69B-220.201(4)(b), F.A.C., enlarge, modify or contravene provisions of law implemented.

16. Whether the Proposed Rule amendments to Rule 69B-220.201(4)(b), F.A.C., are vague, fail to establish adequate standards for the Division's decisions, or vest unbridled discretion in the Division.

17. Whether the Proposed Rule amendments to Rule 69B-220.201(4)(b), F.A.C., are arbitrary or capricious.

18. Whether Proposed Rule 69B-220.201(4)(b), F.A.C., is an invalid exercise of delegated legislative authority pursuant to Section 120.52(8), Florida Statutes.

19. Whether there is a reasonable basis in law or fact for the Division's promulgation of proposed amendments to Rule 69B-220.201(4)(b), F.A.C.

DISPUTED ISSUES OF FACT

20. Proposed Rule 69B-220.051(2)(b), F.A.C., constitutes an invalid exercise of delegated legislative authority pursuant to Section 120.52(8), Florida Statutes, in that:

a. The Division cites Sections 624.308(1), 626.878, 626.9611(1), Florida Statutes, as the specific authority for promulgating the Proposed Rule, and cites Sections 624.307(1), 626.112(1)(a), (3), 626.611, 626.852(2), 626.854, 626.8541, 626.8651, 626.8695(4), 626.8795, 626.8796, and 626.9541(1)(b), (i), Florida Statutes, as the statutes the Proposed Rule is implementing. Section 624.308, Florida Statutes, provides:

624.308 Rules.--

(1) The department and the commission may each adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring duties upon the department or the commission, respectively.

626.878 Rules; code of ethics.--An adjuster shall subscribe to the code of ethics specified in the rules of the department. The rules shall implement the provisions of this part and specify the terms and conditions of contracts, including a right to cancel, and require

practices necessary to ensure fair dealing, prohibit conflicts of interest, and ensure preservation of the rights of the claimant to participate in the adjustment of claims.

There is nothing in the above-cited statutes which expressly and specifically authorizes the Division to promulgate rules to require the supervising public adjuster to be physically present in order to provide a public adjuster apprentice with “direct supervision and guidance” in soliciting or executing a contract for public adjusting services.

b. Proposed Rule 69B-220.051(2)(b), F.A.C., enlarges, modifies or contravenes Section 626.8651, Florida Statutes, which provides, in pertinent part that:

(7) An appointing public adjusting firm may not maintain more than 12 public adjuster apprentices simultaneously. However, a supervising public adjuster may not be responsible for more than three public adjuster apprentices simultaneously and shall be accountable for the acts of the public adjuster apprentices which are transacting business as a public adjuster apprentice.

* * *

(11) A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice except that an apprentice may not execute contracts for the services of a public adjuster or public adjusting firm and may not solicit contracts for services except under the direct supervision and guidance of the supervising public adjuster. (Emphasis supplied.)

The statute authorizes up to twelve (12) public adjuster apprentices per public adjuster firm, and three (3) public adjuster apprentices for a supervising public

adjuster. The statute does not define the phrase “direct supervision and guidance” as requiring the physical presence.

The word “direct” is defined as follows:

5a : marked by absence of an intervening agency, instrumentality, or influence <making *direct* observations of nature>

b : effected by the action of the people or the electorate and not by representatives <*direct* democracy>

c : consisting of or reproducing the exact words of a speaker or writer <a *direct* quotation>

6: characterized by close logical, causal, or consequential relationship <*direct* evidence>

See, www.merriam-webster.com. Thus, physical presence is not necessarily required at all times to directly supervise or guide an apprentice. Therefore, the Proposed Rule enlarges and modifies and contravenes Section 626.8651, which prohibits an apprentice from executing contracts, but authorizes “public adjuster apprentices under the direct supervision of and guidance of the supervising public adjuster” to solicit and execute contracts for public adjusting services.

c. Proposed Rule 69B-220.051(2)(b), is arbitrary and capricious in that it defines “direct supervision” extremely narrowly as “the physical presence of the supervising public adjuster when soliciting a contract for public adjusting services”; to-wit:

1) Pursuant to Section 626.854, Florida Statutes, the business of public adjusting includes advertising for and soliciting insurance claims to aid an insured in negotiating or effectuating a claim or claims for loss of damage covered by an

insurance contract. The business of public adjusting also includes being present at the locations of such losses or damages, such that much of a public adjuster's time is spent in the field, not in an office.

2) Section 626.854(3) – (11), Florida Statutes, expressly sets forth what a public adjuster can and cannot do in terms of soliciting for a contract to provide public adjusting services; to-wit:

(5) A public adjuster may not directly or indirectly through any other person or entity solicit an insured or claimant by any means except on Monday through Saturday of each week and only between the hours of 8 a.m. and 8 p.m. on those days.

~~(6) A public adjuster may not directly or indirectly through any other person or entity initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.~~¹

(7) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 3 business days after the date on which the contract is executed or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, by phone or in writing, whichever is later. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date

¹ This section (6) was declared unconstitutional in Atwater v. Kortum, 95 So. 3d 85 (Fla. 2012).

of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract.

(8) It is an unfair and deceptive insurance trade practice pursuant to s. 626.9541 for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

(a) The following statements, made in any public adjuster's advertisement or solicitation, are considered deceptive or misleading:

1. A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have covered damage to insured property.

2. A statement or representation that invites an insured policyholder to submit a claim by offering monetary or other valuable inducement.

3. A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.

4. A statement or representation, or use of a logo or shield, that implies or could mistakenly be construed to imply that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

(b) For purposes of this paragraph, the term "written advertisement" includes only newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not required to be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:

"THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT."

(9) A public adjuster, a public adjuster apprentice, or any person or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give a monetary loan or advance to a client or prospective client.

(10) A public adjuster, public adjuster apprentice, or any individual or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give, directly or indirectly, any article of merchandise having a value in excess of \$25 to any individual for the purpose of advertising or as an inducement to entering into a contract with a public adjuster.

(11)(a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or other thing of value must be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. The contracts described in this paragraph are not subject to the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments made by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

3) The standards are rigorous for a license as a public adjuster apprentice pursuant to Section 626.8651, Florida Statutes, which provides:

(1) The department shall issue a license as a public adjuster apprentice to an applicant who is:

(a) A natural person at least 18 years of age.
(b) A United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services.

(c) Trustworthy and has such business reputation as would reasonably ensure that the applicant will conduct business as a public adjuster apprentice fairly and in good faith and without detriment to the public.

(2) All applicable license fees, as prescribed in s. 624.501, must be paid in full before issuance of the license.

(3) An applicant must pass the required written examination before a license may be issued.

(4) An applicant must have received designation as an Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA), or as a Certified Claims Adjuster (CCA) after completion of training that qualifies the applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state relating to insurance contracts.

(5) At the time of application for license as a public adjuster apprentice, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state in the amount of \$50,000, conditioned upon the faithful performance of his or her duties as a public adjuster apprentice under the license for which the applicant has applied, and thereafter maintain the bond unimpaired throughout the existence of the license and for at least 1 year after termination of the license. The bond shall be in favor of the department and shall specifically authorize recovery by the department of the damages sustained in case

the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.

6) A public adjuster apprentice shall complete at a minimum 100 hours of employment per month for 12 months of employment under the supervision of a licensed and appointed all-lines public adjuster in order to qualify for licensure as a public adjuster. The department may adopt rules that establish standards for such employment requirements.

(7) An appointing public adjusting firm may not maintain more than 12 public adjuster apprentices simultaneously. However, a supervising public adjuster may not be responsible for more than three public adjuster apprentices simultaneously and shall be accountable for the acts of all public adjuster apprentices which are related to transacting business as a public adjuster apprentice. This subsection does not apply to a public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does not directly or indirectly perform adjusting services for insurers or individual homeowners. [Emphasis supplied.]

4) Public adjuster apprentices are subject to the same code of ethics pursuant to Section 626.878, Florida Statutes, and the same disciplinary guidelines as public adjusters pursuant to Section 626.8698, Florida Statutes;

5) Public adjusters are held accountable for all acts of public adjuster apprentices whom they supervise pursuant to Section 626.8651(7), Florida Statutes.

6) Part of the incentive of a public adjuster in agreeing to time and responsibility of supervising a public adjuster apprentice is the assistance with the solicitation of contracts for public adjusting services. Pursuant to the statute, a public adjuster must supervise each apprentice for a minimum of 100 hours per month. If a supervising public adjuster has three (3) apprentices, as allowed per statute, to require direct physical presence for each apprentice during every solicitation or contract execution is overly burdensome, impractical and unreasonable, particularly, since the public adjuster apprentice is held to the same solicitation regulation and standards as a public adjuster as a matter of law. The “physical presence” requirement is in conflict with Section 626.8651(7), Florida Statutes, which authorizes the supervision of up to three (3) apprentices, and would seem impossible to accomplish. In the age of technology with access to Facetime, Skype, phones, cell phones, computers, tablets, etc., and with protocols or procedures in place for public adjuster apprentices to follow, direct supervision and guidance can be accomplished without restricting the supervising public adjuster to his physical presence at every solicitation or contract execution involving an apprentice.

7) There are other licensed professions which require “direct supervision” which require less than the actual physical presence of the supervisor.

21. Proposed Rule 69B-220.201(4)(b), F.A.C., constitutes an invalid exercise of delegated legislative authority pursuant to Section 120.52(8), Florida Statutes, in that:

a. The Division cites Sections 624.308(1), 626.878, 626.9611(1), Florida Statutes, as the specific authority for promulgating the Proposed Rule, and cites Sections 624.307(1), 62.015(1), 626.611, 626.821, 626.854, 626.8541, 626.858, 626.859, 626.864, 626.8695, 626.8698, 626.877, 626.878, 626.8795, 626.9521, and 626.9541(1)(i), Florida Statutes, as the statutes the Proposed Rule is implementing. Section 624.308, Florida Statutes, provides:

624.308 Rules.--

(1) The department and the commission may each adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring duties upon the department or the commission, respectively.

626.878 Rules; code of ethics.--An adjuster shall subscribe to the code of ethics specified in the rules of the department. The rules shall implement the provisions of this part and specify the terms and conditions of contracts, including a right to cancel, and require practices necessary to ensure fair dealing, prohibit conflicts of interest, and ensure preservation of the rights of the claimant to participate in the adjustment of claims.

There is nothing in the above-cited statutes which expressly and specifically authorizes the Division to promulgate rules to require a public adjuster to assume an ethical and regulatory role to “ensure that if a contractor, architect, engineer, or other professional is used [and ultimately chosen by the claimant/insured] to

perform the repair work made under the claim, the professional, if so required, shall be licensed by the Florida Department of Business and Professional Regulation or other regulatory agency.”

b. Proposed Rule 69B-220.201(4), F.A.C., is arbitrary and capricious because it imposes an ethical and regulatory requirement solely on public adjusters that they “ensure that if a contractor, architect, engineer, or other professional is used [by the Claimant] to perform the repair work made under the claim, the professional, if so required, shall be licensed by the Florida Department of Business and Professional Regulation or other regulatory agency.” This is particularly true when the public adjuster does not have the authority to choose the persons who will perform repair work for the claimant or insured as set forth in Rule 69B-220.201(4)(h), F.A.C., now renumbered as Proposed Rule 69B-220.201(4)(d), F.A.C. To require such an ethical requirement solely on public adjusters is arbitrary and capricious as other adjusters have no such requirement, and it is arbitrary, capricious, and unduly burdensome to impose such a requirement on the public adjuster who is ultimately not in control of who the claimant/insured chooses to complete repair work.

c. Proposed Rule 69B-220.201(4), F.A.C., enlarges, modifies and contravenes Section 626.878, Florida Statutes, as the Proposed Rule imposes requirements on public adjusters which are not contained in Part VI of Chapter

626, Florida Statute, and which are not terms and conditions of a public adjuster contract.

22. Petitioner is entitled to an award of reasonable costs and attorneys' fees pursuant to Section 120.595(2), Florida Statutes, because there is no reasonable basis in law or fact for the Division's promulgation of proposed amendments to Rule 69B-220, F.A.C.

STATUTES AND RULES ENTITLING RELIEF

Statutes and rules entitling Petitioner to relief include, but are not limited to:

a. Sections 120.56(1), (2), 120.569, and 120.57, Florida Statutes, and Chapter 28, Florida Administrative Code (F.A.C.), authorize the instant challenge to the validity of the proposed amendments to Rule 69B-220, F.A.C., by the Petitioner in the instant case.

b. Sections 624.308(1), 626.878, 626.9611(1), Florida Statutes, cited as the specific authority for promulgating the Proposed Rules, and Sections 624.307(1), 626.015(1), 626.112(1)(a), (3), 626.611, 626.621, 626.852(2), 626.854, 626.8541, 626.858, 626.859, 626.864, 626.8651, 626.8695(4), 626.8698, 626.877, 626.878, 626.8795, 626.8796, 626.9521, and 626.9541(1)(b), (i), Florida Statutes, cited as the alleged basis for the Division's authority to promulgate and implement the Proposed Rules.

c. Section 120.595(2), Florida Statutes, provides the basis for an award

of attorneys' fees and costs to the Petitioner.

DEMAND FOR RELIEF

WHEREFORE, Petitioner requests that:

Petitioner be afforded a formal evidentiary hearing pursuant to Sections 120.56(1) and (2), Section 120.569, and Section 120.57(1), Florida Statutes; a Final Order be entered invalidating Proposed Rules 69B-220.051(2)(f) and 69B-220.201(4)(b), F.A.C., as invalid exercises of delegated legislative authority; and Petitioner be awarded reasonable costs and attorneys' fees pursuant to Section 120.595(2), Florida Statutes.

Respectfully submitted this 2nd day of May, 2013.

BREWTON PLANTE, P.A.
225 South Adams Street - Suite 250
Tallahassee, FL 32301
Telephone: 850-222-7718
Facsimile: 850-222-8222
Attorneys for Petitioner

A handwritten signature in dark ink, appearing to read 'Wilbur E. Brewton', is written over a horizontal line.

Wilbur E. Brewton, Esquire
Florida Bar Number: 110408
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Kelly B. Plante, Esquire
Florida Bar Number: 866441
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Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

Division of Insurance Agents and Agency Services

RULE NOS.: RULE TITLES:

69B-220.051 Conduct of Public Adjusters

69B-220.201 Ethical Requirements

PURPOSE AND EFFECT: The purpose of the proposed amendments is to update the rules and incorporate legislative changes to Part VI of Chapter 626, F.S.

SUMMARY: The proposed changes to Rule 69B-220.051, F.A.C., clarify the responsibilities and requirements of public adjusters and public adjuster apprentices, define the terms "direct supervision" and "adjusting services," specify the terms and conditions of public adjuster contracts, require the license number on advertisements, delete provisions that reiterate or paraphrase statutory materials, and prescribe practices to ensure fair dealing between public adjusters and claimants. The proposed changes to Rule 69B-220.201, F.A.C., update the code of ethics for all adjusters, delete provisions that reiterate or paraphrase statutory materials, and clarify the responsibilities and requirements of all adjusters.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein:

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 624.308(1), 626.878, 626.9611(1) FS.

LAW IMPLEMENTED: 624.307(1), 626.015(1), 626.112(1)(a), (3), 626.611, 626.621, 626.852(2), 626.854, 626.8541, 626.858, 626.859, 626.864, 626.8651, 626.8695(4), 626.8698, 626.877, 626.878, 626.8795, 626.8796, 626.9521, 626.9541(1)(b), (i) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: May 9, 2013, 10:30 a.m.

PLACE: Room 116, Larson Building, 200 East Gaines Street, Tallahassee, FL

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Barry Lanier at (850)413-5601 or Barry.Lanier@myfloridacfo.com. If you are hearing or speech

impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Barry Lanier, Chief, Bureau of Investigations, Room 416, Larson Building, 200 E. Gaines Street, Tallahassee, FL 32399-0320, (850)413-5601 or Barry.Lanier@MyFloridaCFO.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69B-220.051 Conduct of Public Adjusters and Public Adjuster Apprentices.

(1) Purpose and Scope. This rule sets forth Department policy as to certain matters generally affecting public adjusters and public adjuster apprentices. Emergency adjuster license procedures are contained in Rule 69B-220.001, F.A.C. Ethical requirements for all types of adjusters are contained in Rule 69B-220.201, F.A.C. Procedures regarding application for licensure are not dealt with in this rule. Ethical provisions are not dealt with in this rule.

(2) Definitions. ~~The following definitions shall apply for purposes of this rule.~~

(a) "Compensation" or "remuneration" means anything of value, whether received directly or indirectly, in return for adjusting services performed.

(b) "Department" means the Florida Department of Financial Services.

(c) "Financial Interest" ~~means direct or indirect ownership.~~

~~(c)(d)~~ "Licensed public adjuster" and "licensed public adjuster apprentice," hereinafter referred to as "public adjuster," means those and include only persons currently licensed in good standing by the Department as public adjusters and as public adjuster apprentices, ~~whether the licensure is resident licensure under Section 626.865, F.S., or nonresident licensure under Section 626.8732, F.S.~~ The phrase does not include persons licensed as public adjusters by other states but not by the State of Florida.

~~(d)(e)~~ "Unlicensed persons," ~~as used in this rule,~~ means those ~~and refers to~~ persons who are not currently licensed ~~and appointed in good standing by the Department as resident or nonresident public adjusters.~~

(e) "Person" includes natural persons and legal entities.

(f) "Direct supervision" means the physical presence of the supervising public adjuster when soliciting or executing a contract for public adjusting services.

(g) "Adjusting services" means the preparation, completion or filing of an insurance claim form with the respective insurer for an insured or third party claimant.

(3) Communications Concerning Public Adjuster Services.

(a) Solicitation. The solicitation of public adjusting business for compensation is deemed to be a material part of the business of public adjusting and, therefore, requires licensure as a public adjuster under the laws of Florida and the rules of the Department, and shall be engaged in only by persons licensed by the Department as public adjusters. Unlicensed persons shall not engage in such activity even under the supervision of a licensed public adjuster. The phrase "solicitation of public adjusting business" ~~and similar phrases as used in this rule~~ means, for compensation,

initiating contact with any person, whether in person, by mail, by telephone, by brochure, by advertisement, by electronic media, or otherwise, and thereby therein seeking, causing, urging, advising, or attempting;— ~~to~~ to have any person enter into any agreement engaging the services of a public adjuster with respect to a specific claim made or to be made under a policy of insurance, in any capacity; or

~~2. To have any person subsequently speak or meet with a licensed public adjuster for the purpose of engaging the services of a public adjuster in any capacity or for the purpose of being advised by a public adjuster in any regard.~~

(b) Answering Telephone Calls. The answering of incoming telephone calls by unlicensed persons, at the place of business of a public adjuster, is not violative of this rule so long as the unlicensed persons engage in purely administrative matters and not in judgment, ~~or~~ interpretation or solicitation with regard to any insurance contract, public adjuster contract, claim, or potential claim.

(4) Advertising.

(a) As with all forms of advertising concerning the business of insurance, public adjusters shall not falsely inform or advertise as set forth in Section 626.9541(1)(b), F.S., as well as any other section within the Florida Insurance Code that relates to advertising.

~~(b) Only Licensed Adjusters to Advertise. No person or entity shall in any way advertise services as a public adjuster in this state, unless such person or entity is licensed as a public adjuster or is a member of the Florida Bar.~~

~~(b)(e)~~ Advertisements to Show Licensee's Full Name and License Number. Any advertisement, in whatever format, by a public adjuster shall legibly state the full name and license number, as specified in Department records, of the public adjuster who has caused the advertisement to appear. Any printed license number or disclosure shall be in typeface no smaller than the typeface of the main body of text in the advertisement. Where a public adjusting firm containing multiple licensed public adjusters is causing the advertisement to appear, the designated primary adjuster of said firm shall ~~designate one of said licensees~~ cause his or her whose full name and license number, as specified in Department records, shall to appear in the advertisement.

~~1. Print and Website Advertisements. In print and website advertisements, the public adjuster's full name, as specified in Department records, shall be in typeface no smaller than the typeface of the main body of text in the advertisement. Print advertisements include newspapers, magazines, flyers, brochures, business cards, adhesive and magnetic publication, and similar printed materials. If the material is already printed when this rule takes effect, the required public adjuster's full name shall be added by means of rubber stamp, adhesive label, or other means.~~

~~2. Television Advertisements. In television advertisements the public adjuster's full name as specified in department records shall be made to appear on the screen for a period reasonably calculated to allow a viewer to write the name down.~~

~~3. Radio Advertisements. In radio advertisements, the public adjuster's full name as specified in department records shall be read during the advertisement, and at a speed reasonably calculated to allow an average listener to note the name of the licensee as it appears on his or her licensure.~~

~~(c)(d)~~ Responsibility of Advertising Licensee. The licensed adjuster whose name and license number appears in the advertisement is responsible for personally reviewing the content of the advertisement and assuring that the

advertisement complies with the rules of the Department and the Florida Insurance Code and is in all regards fair, accurate, and in no way untruthful, deceptive or misleading.

~~(5) It is an affirmative duty of every public adjuster to supervise their business affairs and their staff to ensure to the extent it is within the public adjuster's power that this Florida Insurance Code and Rule Chapter 69B-220, F.A.C., are not violated.~~

~~(5)(6)~~ Required Contract Terms. In addition to the contract terms required by Sections 626.854 and 626.8796, F.S., public adjusters shall ensure that all contracts for their services contain the following terms:

(a) The contract shall legibly state the full name, as specified in Department records, of the public adjuster or public adjuster apprentice signing the contract.

(b) To ensure fair dealing, the All public adjuster contracts shall contain ~~show the public adjuster's~~:

~~1. Permanent business address and phone number; and~~

~~2. Florida Department license number.~~

(c) ~~The contract shall show:~~

1. The insured's full name, ~~and~~ street address, active phone number at which the insured can be contacted, and any other current contact information the insured wishes to provide;

2. The ~~a~~Address of loss;

3. A brief description of the loss to include the actual date or, if not known with certainty, the approximate date and the nature of the event causing the loss (i.e., windstorm, fire, sinkhole, or other peril);

4. The insured's insurance company name and policy number, if available.

~~5.(d)~~ ~~The contract shall show the date the contract with the public adjuster was actually signed by the insured or claimant.~~

~~6.(e)1.~~ The full compensation to the public adjuster shall be stated in the contract.

~~7.2.~~ If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

~~8.3.~~ Any costs to be reimbursed to the public adjuster out of the proceeds shall be specified in either the contract or an addendum to the contract, which shall be signed and dated by the parties.

~~(6)(7)~~ All contracts for public adjuster services must be in writing. The contract must be signed by the public adjuster who solicited the contract. A copy of the completed contract shall be provided to the insured or claimant at the time he or she signs the contract.

~~(7)(8)~~ No public adjuster shall ~~may~~ settle a claim unless the terms and conditions of settlement are approved in writing and dated by the insured.

Rulemaking Authority 624.308(1), 626.878, 626.9611(1) FS. Law Implemented 624.307(1), 626.112(1)(a), (3), 626.611, 626.852(2), 626.854, 626.8541, ~~626.865(2)~~, 626.8651, 626.8695(4), 626.8795, 626.8796, ~~626.874~~, 626.9541(1)(b), (i) FS. History—New 4-26-94, Amended 12-18-01, Formerly 4-220.051, Amended 3-27-05, 9-3-06,

69B-220.201 Ethical Requirements for All Adjusters.

(1) Definitions. ~~The following definitions shall apply for purposes of this rule:~~

(a) "Adjuster," when used without further specification, includes all types and classes of insurance adjusters,

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(company employee, independent, and public), subject to Chapter 626, F.S., regardless of ~~whether resident or nonresident~~, and whether permanent, temporary, or emergency licensees.

~~(b) "Client" includes both clients and potential clients; and means any person who consults with or hires an adjuster to provide adjusting services.~~

~~(b)(e)~~ "Department" means the Florida Department of Financial Services.

~~(c)(d)~~ "Person" includes natural persons and legal entities.

(2) Violation.

(a) Violation of any provision of this rule shall constitute grounds for administrative action against the licensee.

(b) A breach of any provision of this rule constitutes an unfair claims settlement practice.

(3) Code of Ethics. The work of adjusting insurance claims engages the public trust. An adjuster shall put the duty for fair and honest treatment of the claimant above the adjuster's own interests in every instance. The following are standards of conduct that define ethical behavior, and shall constitute a code of ethics that shall be binding on all adjusters:

(a) An adjuster shall: not directly or indirectly refer or steer any claimant needing repairs or other services in connection with a loss to any person with whom the adjuster has an undisclosed financial interest, or who will or is reasonably anticipated to provide the adjuster any direct or indirect compensation for the referral or for any resulting business.

~~(b) An adjuster shall treat all claimants equally.~~

~~1. An adjuster shall not provide favored treatment to any claimant.~~

~~2. An adjuster shall adjust all claims strictly in accordance with the insurance contract.~~

~~(b)(e)~~ An adjuster shall not approach investigations, adjustments, and settlements in a manner prejudicial to the insured.

~~(c)(d)~~ An adjuster shall make truthful and unbiased reports of the facts after making a complete investigation.

~~(d)(e)~~ An adjuster shall handle every adjustment and settlement with honesty and integrity, and allow a fair adjustment or settlement to all parties without any compensation ~~remuneration~~ to himself or herself except that to which he or she is legally entitled.

~~(e)(f)~~ An adjuster, upon undertaking the handling of a claim, shall act with dispatch and due diligence in achieving a proper disposition of the claim. The lack of dispatch and due diligence shall include the failure of the adjuster to perform services for the claimant or policyholder of the company they represent or in the case of a public adjuster, the person under contract for their services or where the adjuster engages in a pattern of neglect which causes or could potentially cause injury to the insured or claimant.

~~(f)(g)~~ An adjuster shall promptly report to the Department any conduct by any licensed agent, agency or adjuster ~~insurance representative~~ of this state that may constitute or is reasonably believed by the adjuster to constitute a violation of ~~which violates~~ any provision of the Florida Insurance Code or Chapter 69B, F.A.C. ~~Department rule or order.~~

~~(g)(h)~~ An adjuster shall exercise heightened ~~extraordinary~~ care when dealing with persons 65 years of age and older ~~elderly clients~~ to assure that they are not disadvantaged in their claims transactions by failing memory or

impaired cognitive processes.

(h)(i) An adjuster shall not negotiate or effect settlement directly or indirectly with any third-party claimant represented by an attorney, if the adjuster has knowledge of such representation, except with the written consent of the attorney. For purposes of this subsection, the term "third-party claimant" does not include the insured or the insured's resident relatives.

(i)(j) An adjuster is permitted to interview any witness, or prospective witness, without the consent of opposing counsel or party. In doing so, however, the adjuster shall scrupulously avoid any suggestion calculated to induce a witness to suppress or deviate from the truth, or in any degree affect the witness's appearance or testimony during deposition or at the trial. If any witness making or giving a signed or recorded statement so requests, the witness shall be given a copy of the statement.

(j)(k) An adjuster shall not advise a claimant to refrain from seeking legal advice, nor advise against the retention of counsel or the employment of a public adjuster to protect the claimant's interest.

(k)(l) An adjuster shall not attempt to negotiate with or obtain any statement from a claimant or witness at a time that the claimant or witness is, or would reasonably be expected to be, in shock or serious mental or emotional distress as a result of physical, mental, or emotional trauma associated with a loss. The adjuster shall not conclude a settlement when the settlement would be disadvantageous to, or to the detriment of, a claimant who is in the traumatic or distressed state described above.

(l)(m) An adjuster shall not knowingly fail to advise a claimant of the claimant's claim options ~~rights~~ in accordance with the terms and conditions of the insurance contract ~~and of the applicable laws of this state~~. ~~An adjuster shall exercise care not to engage in the unlicensed practice of law as prescribed by the Florida Bar.~~

(m)(n) A company employee adjuster or independent adjuster shall not draft special releases called for by the unusual circumstances of any settlement or otherwise draft any form of release, unless advance written approval by the insurer can be demonstrated to the Department. Except as provided above, a company employee adjuster or independent adjuster is permitted only to fill in the blanks in a release form approved by the insurer they represent.

(n)(o) An adjuster shall not undertake the adjustment of any claim concerning which the adjuster is not currently competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the adjuster's current expertise.

(o)(p) ~~No person shall, as a public adjuster, represent any person or entity whose claim the adjuster has previously adjusted while acting as an adjuster representing any insurer or independent adjusting firm.~~ No person shall, as a company employee adjuster or independent adjuster, represent him- or herself or any insurer or independent adjusting firm against any person or entity that the adjuster previously represented as a public adjuster.

(q) ~~A public adjuster shall not represent or imply to any client or potential client that insurers, company adjusters, or independent adjusters routinely attempt to, or do in fact, deprive claimants of their full rights under an insurance policy. No insurer, independent adjuster, or company adjuster shall represent or imply to any claimant that public adjusters are unscrupulous, or that engaging a public adjuster will delay or have other adverse effect upon the settlement of a claim.~~

(r) ~~No public adjuster, while so licensed in the Department's records, may represent or act as a company~~

adjuster, independent adjuster, or general lines agent.

~~(s) A company adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim shall provide at least 48 hours notice to the insured or claimant prior to scheduling a meeting with the claimant or an on-site inspection of the insured property. The insured or claimant may deny access to the property if this notice has not been provided.~~

(4) Public Adjusters, Other Ethical Constraints. In addition to the considerations set out above for adjusters, the following ethical considerations are specific to public adjusters and shall be binding upon public adjusters:

~~(a) A public adjuster shall advise the insured and claimant in advance of the insured or claimant's right of counsel, and choice thereof, to represent the insured or claimant, and that such choice is to be made solely by the insured or claimant.~~

~~(a)(b) Prior to submitting any claim to the insurer, t~~The public adjuster shall notify the insured or claimant in advance of the name, and location and telephone number of any proposed contractor, architect, engineer, or other similar professional, whose before any bid or proposal was used in whole or in part by the public adjuster in the preparation of the claim by any of these persons may be used by the public adjuster in estimating the loss or negotiating settlement. The insured or claimant may exercise veto power over the use of said persons, such that the public adjuster may not submit a claim to which that veto power has been applied of any of these persons, in which case that person shall not be used in estimating costs.

~~(b)(e)~~ The public adjuster shall ensure that if a contractor, architect, engineer, or other professional is used to perform the repair work made under the claim in formulating estimates or otherwise participates in the adjustment of the claim, the professional, if so required, shall be licensed by the Florida Department of Business and Professional Regulation or other regulatory agency.

~~(c)(d)~~ A public adjuster shall not prevent, or attempt to dissuade or prevent, an insured or a claimant from speaking privately with the insurer, company employee adjuster, or independent adjuster, attorney, or any other person regarding the settlement of the claim.

~~(e)~~ A public adjuster shall not acquire any interest in salvaged property, except with the written consent and permission of the insured.

~~(f)~~ A public adjuster shall not accept referrals of business from any person with whom the public adjuster may conduct business where there is any form or manner of agreement to compensate the person, whether directly or indirectly, for referring business to the public adjuster. Except as between licensed public adjusters, no public adjuster shall compensate any person, whether directly or indirectly, for the principal purpose of referring business to the public adjuster.

~~(g)~~ A public adjuster's contract with a client shall be revocable or cancellable by the insured or claimant, without penalty or obligation, for at least 3 business days after the contract is executed. The public adjuster shall disclose to the insured that the insured has the right to cancel with prompt notice within the revocation period. If the insured elects to cancel the contract, prompt notice shall be provided to the adjuster. Nothing in the provision shall be construed to prevent an insured from pursuing any civil remedy after the 3-day cancellation period.

~~(d)(h)~~ A public adjuster shall not enter into a contract or accept a power of attorney which vests in the public adjuster the effective authority to choose the persons who shall perform repair work.

~~(e)(i)~~ A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement, including the terms required by Rule subsection 69B-220.051(6), F.A.C.

(f) No public adjuster or public adjusting firm shall require, demand, charge, or accept any fee, retainer, compensation, commission, deposit, or other thing of value prior to receipt by the insured or claimant of a payment on the claim by the insurer. No public adjuster or public adjusting firm shall accept any form of payment or remuneration for adjusting services that the public adjuster or public adjusting firm have not yet performed.

(g) No public adjuster shall enter into any contract, agreement or other arrangement with any person, including an attorney, building contractor, architect, appraiser or repairman, by which the person would enter into an agreement to assist a claimant or insured on an insurance claim, utilize the services of the adjuster to carry out the agreement, and from the proceeds of the claim, allow the public adjuster to accept an amount that would exceed the limitation of the public adjuster's compensation imposed by Section 626.854(11), F.S.

(h) No public adjuster, while so licensed in the Department's records, shall represent or act as or be appointed as a company employee adjuster or independent adjuster. A public adjuster may hold a general lines agent license. However, no public adjuster, while so licensed in the Department's records, shall represent or act as both a public adjuster and a general lines agent for the same insurance claim.

(i)(j) A public adjuster shall not restrict or prevent an insurer, company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to an insured or claimant or to the insured property that is the subject of a claim.

(j) No public adjuster shall re-open a claim and represent any person or entity on that re-opened claim if he or she previously adjusted that claim as an adjuster representing any insurer or adjusting firm.

(k) In the absence of a declared state of emergency by the Governor of the State of Florida, the public adjuster shall respond with specific information to a written or electronic request for claims status from a party to the public adjuster contract or the party's designated representative, within fourteen (14) days from the date of the request and shall document the file accordingly.

~~(5) Public Adjusters, Ethical Constraints During State of Emergency. In addition to considerations set forth above, the following ethical considerations shall apply to public adjusters in the event that the Governor of the State of Florida issues an Executive Order, by virtue of the authority vested in Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, declaring that a state of emergency exists in the State of Florida:~~

~~(a) No public adjuster shall require, demand, charge or accept any fee, retainer, compensation, commission, deposit, or other thing of value, prior to receipt by the insured or claimant of a payment on the claim by the insurer.~~

~~(b) As to any one insured or claimant, no public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent of the amount of any insurance settlement or claim payment.~~

~~(c) No public adjuster shall enter into any contract, agreement or other arrangement with any person, including an attorney, building contractor, architect, appraiser or repairman, by which the person would enter into an agreement to assist a claimant or insured on an insurance claim, utilize the services of the adjuster to carry out the agreement and pay the adjuster an amount that would exceed the limitation of the adjuster's compensation or reimbursement as provided in paragraph (b) above.~~

Rulemaking Authority 624.308, 626.878, 626.9611(1) FS. Law Implemented 624.307(1), 626.015(1), 626.611, 626.621, 626.854, 626.8541, 626.858, 626.859, 626.864, ~~626.865(2)~~, 626.8695, 626.8698, 626.877, 626.878, 626.8795, 626.9521, 626.9541(1)(i) FS. History--New 6-2-93, Amended 12-18-01, Formerly 4-220.201, Amended 3-27-05, 9-3-06, 8-14-11, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barry Lanier, Chief, Bureau of Investigations

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Jeff Atwater, Chief Financial Officer,
Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 4, 2013

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