
THE BRECHNER REPORT

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Escambia bans cell phones, laptops during meetings

ESCAMBIA COUNTY – A week after one of its members was charged with a noncriminal violation of Florida’s Public Records Law related to public e-mails sent through a private account, the Escambia County Commission adopted a new technology policy.

The policy was recommended by County Attorney Alison Rogers and prohibits commissioners from using cell phones, BlackBerrys, PDAs or laptops

during meetings or workshops, according to the *Pensacola News Journal*. Officials are permitted to have their phone set to silent or vibrate and will be allowed to leave commission chambers in the event of a perceived emergency.

Another aspect of the policy bans commissioners from blogging, texting, instant messaging or using social networking sites such as Facebook for county business. The new policy does allow commissioners to comment on online stories and respond to blogs.

Finally, the policy prohibits the use of private e-mail accounts for county business.

“The point is, you don’t want these things to be an interactive way of communicating with each other,” Rogers said, according to the *News Journal*. Florida’s Sunshine Law applies to any communication between two or more members of a public body regarding a matter on which foreseeable action might be taken by the public body.

Source: *Pensacola News Journal*

ACCESS MEETINGS

Commissioner fined for failure to turn over e-mails

PENSACOLA – Escambia County Commissioner Gene Valentino pleaded no contest to a noncriminal violation of Florida’s Public Records Law, according to the *Pensacola News Journal*. He was fined \$500.

For criminal violations of the Public Records Law, Fla. Stat. 119.10 provides for suspension and impeachment plus up to one year in jail if a public officer knowingly violates the law.

Valentino’s charge stemmed from an investigation by State Attorney Bill Eddins, who acted on a complaint from an attorney representing two property owners fighting a proposal to build a casino on Perdido Key.

The attorney, Gregory Smith, alleged that Valentino did not comply with a public records request for e-mails related to the proposal.

Eddins’ office took possession of Valentino’s personal laptop computer as part of its investigation. Valentino has denied violating the Public Records Law, explaining that he forgot some of the e-mails regarding the casino proposal were on his home computer due to problems with the county’s computer system.

Source: *Pensacola News Journal*

ACCESS RECORDS

Fla. Supreme Court: Recordings open to public

TALLAHASSEE – A proposal to restrict disclosure of digital recordings of court proceedings was rejected by the Florida Supreme Court, which called the proposal “overly restrictive and . . . contrary to Florida’s well established public policy of government in the sunshine and [the] Court’s longstanding presumption in favor of openness for all court proceedings and allowing access to records of those proceedings.”

The Commission on Trial Court Performance and Accountability had recommended that “electronic records, videotapes, or stenographic tapes of court proceedings” be deleted from the definition of “court records” in the Florida

Rules of Judicial Administration.

The proposed change would have severely restricted disclosure of electronic records.

To address concerns of courtroom recording systems capturing confidential conversations between attorneys and clients, the Court did adopt a new provision titled “Safeguarding Confidential Communications When Electronic Recording Equipment Is Used in the Courtroom.”

The rule requires court personnel to notify participants when courtroom proceedings are being recorded; attorneys must take precautions to prevent disclosure of confidential communications; and “[p]articipants have a duty to protect

confidential information.”

The Court’s decision followed the May 2009 decision of the Second District Court of Appeals denying Media General Operations, Inc., publisher of the *Tampa Tribune*, access to an audio recording of a sentencing hearing.

The Second District concluded that the written transcript of the hearing provided by the Sixth Judicial Circuit was sufficient and that the actual audio recording was not an “electronic record” as defined in the Florida Rules of Judicial Administration.

Following the Florida Supreme Court’s decision in favor of access to audio recordings of court proceedings, Media General has requested the Court review the Second District’s decision.

Source: www.floridasupremecourt.org

COURTS

Utility regulators demand salary data from FPL, Progress Energy

TALLAHASSEE – Two Florida energy providers seeking to increase their rates have been ordered by the Public Service Commission (PSC), the body who will approve or deny the increase, to provide salary information.

Florida Power & Light (FPL) is seeking a \$1.3 billion per year increase and Progress Energy wants to increase rates by \$500 million annually.

FPL had resisted releasing the information, citing concern for employee privacy, safety and security, according to the *Miami Herald*. The PSC, however, felt that the information was needed for the Commission's review of the rate increases.

The PSC decision requires both FPL and Progress Energy to provide the PSC with a confidential document containing information on salaries for its employees who make at least \$165,000 per year.

The PSC would know the job titles and salaries of the employees, and the individual figures would be released to the public.

FPL appealed the Commission's order to the 1st District Court of Appeal. It did, however, submit documents to the PSC showing that \$40.5 million is budgeted this year for 42 executive salary packages. In turn, the Commission released redacted documents to the public.

FPL CEO Armando Olivera, who receives a salary package of \$3.6 million per year, defended the salaries. "We need good people and these people need to be compensated," Olivera told the PSC. "If we don't, these people will go another place."

PSC Commissioner and former state senator Nancy Argenziano has been vocal in her criticism of FPL's resistance to release the information. "The public's right to know trumps the individual's right to keep secret their essentially publicly funded salary," Argenziano said. "We are the only policeman on the block and without that information, it would render us useless."

Source: *Miami Herald*

Alumnus sues UF for records

GAINESVILLE – A recent graduate of the University of Florida has filed a public records lawsuit seeking audio and video recordings of Student Senate meetings, according to *The Florida Alligator*.

Frank Bracco graduated in May 2009 and was previously a student senator.

Bracco claims that since November 2008 he has been trying to obtain copies of audio and video of the meetings. He alleges that his requests were denied and in some instances the records were inadvertently destroyed.

Student Government employees first offered to make the recordings available online and when that didn't happen, they offered to allow Bracco to access the records in the SG office, according to *The Alligator*.

Bracco's suit seeks copies of the records as well as attorney's fees and costs.

Source: *The Florida Alligator*

Paper files criminal complaint against county attorney

FORT MYERS – The *News-Press* filed a complaint with the State Attorney's Office alleging that a deputy county attorney violated the Public Records Law. The complaint stemmed from requests for notes of an investigator hired by Lee County to look into possible racial harassment by county employees.

The investigator, Debra Jessup, concluded that the racially harassing behavior of nine Lee County Facilities Management employees resulted in a

hostile work environment. The employees were fired Jan. 31, 2009, and seven of them have filed a whistle-blower lawsuit against the county. The civil suit alleges the employees were actually fired for participating in a county Equal Opportunity Employment investigation, according to the *News-Press*.

When a *News-Press* reporter requested Jessup's notes in February, deputy county attorney Andrea Fraser responded that the notes did not exist and the notes became

the report issued by Jessup. However, in June, during a deposition in the civil lawsuit, Jessup provided the notes to an attorney. Fraser said she was under a "mistaken impression" that the notes did not exist, according to the *News-Press*.

Lee County Commissioner Ray Judah defended the county and its attorney, describing it as one of the country's "most transparent counties" and Fraser as "a person of integrity and honesty."

Source: *News-Press*

Former sheriff cleared in debate over deleted files

PENSACOLA – The State Attorney's Office has determined that the deletion of all files from several computers in the Escambia County Sheriff's Office did not destroy any public records, according to the *Pensacola News Journal*.

Former Sheriff Ron McNesby was replaced earlier this year by Sheriff David Morgan. After Morgan took office, his chief deputy expressed concern to the State Attorney's Office that records had been removed from computers in the

Sheriff's Office.

Assistant State Attorney John Molchan investigated the complaint and determined that although the desktop computers, including McNesby's, were "wiped clean of files," much of the data was saved in other formats.

"We're not saying what Sheriff McNesby did was the model way to do things," Molchan said. "I don't think that's a prudent thing to do. It is clearly something that is problematic. We're

just examining it from the standpoint of a criminal prosecution."

McNesby characterized the complaint as "frivolous" and urged his detractors to "move on," according to the *News Journal*. The chief deputy who made the complaint, Bill Chavers, said that the Sheriff's Office would request a review by the Office of Open Government.

Willful destruction of public records can result in criminal charges.

Source: *Pensacola News Journal*

Nassau mulls limits on commissioner debates

NASSAU COUNTY – County commissioners who have a conflict of interest on a particular issue before the Nassau County Commission may be required to leave the room during debate on that issue, if a proposed ordinance passes, according to the *News Leader* (Fernandina Beach).

Commissioner Mike Boyle suggested the ordinance, drawing on his discussions

with Broward County commissioners at a Florida Association of Counties meeting. Broward County requires commissioners who have a conflict of interest to leave the room during debate, according to Commissioner Boyle.

Nassau commissioners who have a conflict of interest are already required to recuse themselves from voting.

Commissioner Stacy Johnson seemed

concerned that the restriction could get “out of control” and possibly extend beyond the individual commissioner to boards appointed under the commissioner. Johnson felt that the public has a role in policing government ethics, according to the *News Leader*.

Boyle hoped the ordinance, if passed, would encourage more citizen oversight.

Source: *News Leader*

Media balks at SEC policies

NEW YORK – Protests from major media organizations prompted the Southeastern Conference (SEC) to ease its new media rules, which would have prohibited journalists from blogging or using video or audio game highlights on their Web sites. The rules also restricted the use of photos and pre- and post-game audio and video.

The SEC backed off most of the restrictions, allowing media to keep photos online indefinitely, sell images, post clips of game-related events and post to blogs during games (but no play-by-play posts). The revised rules also eliminate the requirement for the SEC to license newspaper images.

The change came after media organizations complained and threatened a boycott, according to *Editor & Publisher*. The Associated Press Sports Editors, Associated Press

Managing Editors and the American Society of News Editors authored a letter to the SEC protesting the restrictions.

Members of the press weren't the only targets of SEC's attempt to protect the \$3 billion it receives from ESPN and CBS for broadcast rights to games, according to the *St. Petersburg Times*. A new fan policy contained rules banning fans from disseminating information, audio or video about the games – meaning no Facebook, Twitter or YouTube posts.

However, the SEC also relaxed the broad fan restrictions, and their current policy bans dissemination of “real-time” information for commercial use or in a way that is intended to substitute for radio, television or video coverage. Fans can take photos for personal use, but no “game action videos” are permitted.

Source: *Editor & Publisher, St. Petersburg Times*

District seeks Web notices

MANATEE COUNTY – Newspapers might have to trim their budgets even more if a proposal by the Manatee County School District is turned into law, according to the *Sarasota Herald Tribune*.

The district wants to eliminate the need for public notice of district meetings in newspaper classifieds. Instead, the district would put the notices on its own Web sites and send out news releases.

The switch could save Manatee County about \$6,000 per year. The district intends to ask the Florida School Board Association to lobby legislators for the change, which would have statewide impact if passed.

“You're going to be cutting out a whole swath of the population if you just go to your own government Web site,” said Florida Press Association general counsel Sam Morley.

Source: *Sarasota Herald Tribune*

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City, Air Force settle FOIA suit

VALPARAISO – The Valparaiso City Commission has voted to settle its Freedom of Information Act lawsuit against the Air Force, according to the *Northwest Florida Daily News*.

The city sued for information regarding aircraft at Eglin Air Force Base, including information regarding noise, mitigation and alternatives.

The Air Force plans to house dozens of F-35 fighter jets at the base, which will be the location of the first training school for F-35 pilots, according to reporter Mona Moore of the *Daily News*.

All pilots, including those from allied countries, will learn how to fly this new aircraft at Elgin. This will result in take-offs approximately once every fifteen minutes.

The Air Force originally responded to Valparaiso's request for information by providing public comments related to the Base Realignment and Closure decision.

Base Realignment and Closure is a Department of Defense process to reorganize and streamline military operations.

After only receiving the public comment portion of its request, the city sued.

Under the settlement, the Air Force will provide Valparaiso with noise data but will not release the mitigation information.

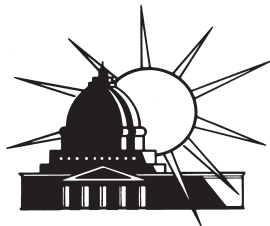
A Supplemental Environmental Impact Statement is expected to be complete by September 2010 and will include mitigation information.

Source: *Northwest Florida Daily News*

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Technology policy restores commission's public priority

The Sunshine Law non-criminal violation charge against Escambia County Commissioner Gene Valentino shows the increasingly complex nature of public records in an increasingly electronic world.

Valentino pleaded no contest to the charge. He was at the center of an investigation into e-mails related to county business that were saved to his personal computer. The commissioner was fined \$500, which is the maximum fine for a non-criminal infraction under the Public Records Law.

His situation makes the communications policy changes recently adopted by Escambia County all the more timely and sensible. The new policy will end the unfortunately common practice of commissioners being distracted

during meetings by answering calls, e-mails or text messages.

The policy also restricts commissioners from communicating on

blogs or sites like Facebook or MySpace regarding county business.

And it will require commissioners to do county business only on county e-mail accounts, not personal accounts.

County attorney Alison Rogers, who drafted the new policy, described it as "one part courtesy and three parts preventative medicine."

Texting, tweeting, e-mailing and talking on cell phones are all communications portals that complicate compliance with Florida's open records laws. Commissioners and other elected officials no longer are walking on a public records tightrope, but a series of tightropes that cross back and forth.

Instant communications are a part of today's world, and we have all seen how fast new means of communications become the norm. Tweeting was unknown to most people a year ago, and today it is probably the fastest-growing means of personal communication.

What's next?



Carl Wernicke

Obviously, no one knows. But local governments have to be ready to adapt their policies to the new world of communications.

The Sunshine Law imposes strict requirements regarding how elected officials can communicate among themselves, and for preserving and making records public.

This new world also makes it easy for elected officials to multi-task when they shouldn't. And one place they shouldn't be multi-tasking is public meetings.

Not only do members of the public deserve the full attention of their elected representatives when speaking to commissioners, commissioners should be fully engaged during discussions of public business.

We have already heard reports of public officials being distracted by their cell phones or other devices during meetings, much the way drivers are distracted from paying attention to the road when using cell phones. There's no reason for it.

Escambia County Commissioner Kevin White shows how easy it is for commissioners to handle potential emergency calls. He gives his cell phone to an aide during meetings; the aide can alert White if a call requires the commissioner's attention.

But common sense should suffice. Commissioner Wilson Robertson says he ought to be able to check a vibrating phone to see if the call needs immediate attention; if it does, he can step outside and answer it.

We understand the imperatives of constant and instant communication today.

But the bottom line is that commissioners and other elected officials are there to do the public's business.

If they can't devote their full attention to it, they shouldn't be there. The new policy will help restore that priority.

Carl Wernicke is Opinion Editor for the Pensacola News Journal. He is a Pensacola native and has been with the newspaper since 1978.