
THE BRECHNER REPORT

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State high court orders mandatory electronic filings

TALLAHASSEE – The Florida Supreme Court adopted new amendments to Florida’s court rules, requiring pleadings and other documents to be filed with the court electronically.

The amendments, which were adopted unanimously, also require lawyers to exchange pleadings with each other electronically, *The Associated Press* reported.

Though electronic filings currently are optional, the order requires all attorneys to comply with the mandatory electronic filing requirements by Oct. 1, 2013, according to *The Associated Press*.

“The new rules and amendments to existing rules we adopt represent an important step in this ongoing effort to change the ways that the judicial

system operates from a paper world to an electronic world,” Justice Pariente wrote in the court document approving the amendments. “In that effort, the Court keeps at the forefront that our court system must be accessible, fair, and effective.”

The requirements are not meant to apply to individuals representing themselves, *The Associated Press* reported.

Source: The Associated Press, News Service of Florida

COURTS

Judge orders Zimmerman’s statements released

SANFORD – A judge ruled that statements made to police by George Zimmerman, the man charged in the shooting and killing of Trayvon Martin, 17, should be released to the public.

Several media organizations, including the *Orlando Sentinel*, requested the statements be disclosed despite attempts by the prosecution to

keep the statements private.

Circuit Judge Kenneth Lester, Jr., of the 18th Judicial Circuit, ordered the statements released within 15 days, but refrained from releasing the names of unidentified civilian witnesses in the case and Zimmerman’s phone records,

according to the *Orlando Sentinel*.

In another challenge, prosecutors released the recordings of more than 100 jailhouse phone calls made by Zimmerman during his time in Seminole County Jail, after news organizations requested their unsealing, the *Orlando Sentinel* reported.

Source: Orlando Sentinel

ACCESS RECORDS

FDLE finds Scott emails deleted accidentally

TALLAHASSEE – A report released by Florida authorities concluded that Gov. Rick Scott and members of his transition team did not willingly delete public records during the two-month period in between his inauguration and taking office.

The 10-month investigation, which Scott requested following reports that

emails were missing, ended without “absolute certainty” that all emails written or sent to Scott had been recovered, according to *The Associated Press*. The Florida Department of Law Enforcement described the loss of emails as an “oversight” by Scott’s top campaign officials and the private company hired to

maintain the email accounts.

Scott administration officials said that it would put at least 33,000 pages of the transition documents obtained through the investigation on the state’s Project Sunburst website, *The Associated Press* reported.

Source: The Associated Press

Judge rules headlight flashing is protected speech

SANFORD – A judge ruled that a motorist who flashed his headlights to warn oncoming traffic of a speed trap could not be ticketed for his protected speech.

Ryan Kintner, 25, sued the Seminole County Sheriff’s Office in 2011 after he received a ticket, alleging that law enforcement had misapplied a state law designed to

prevent motorists from flashing after-market emergency lights, according to the *Orlando Sentinel*. In the decision, Circuit Judge Alan Dickey, of the 18th Judicial Circuit in Sanford, ruled that individuals who flash their headlights to communicate are engaging in First Amendment speech protected by the U.S. Constitution.

Dickey had earlier ruled that the state law at issue did not apply to the type of

headlight flashing at issue in the case, according to the *Orlando Sentinel*.

A similar lawsuit, filed in Tallahassee by Kinter’s attorney J. Marc Jones against the Florida Highway Patrol was thrown out in July.

Both the Seminole County Sheriff’s Office and the Florida Highway Patrol stopped issuing tickets for such violations, following the filing of the cases.

Source: Orlando Sentinel

FIRST AMENDMENT

City of Vernon ordered to hand over public records

CHIPLEY – A judge ruled that the city of Vernon must turn over records about a meeting held in violation of the state’s Sunshine Law.

In the lawsuit, the *Washington County News*, a sister paper of *The News Herald* (Panama City), argued that an executive session held April 23 to update council members of pending litigation was a violation of the state’s Sunshine Law and the tape of the meeting should become public record,

according to *The News Herald*.

Reporters were asked to leave the council meeting before the regular meeting was formally adjourned.

The lawsuit also alleged a violation of the state’s Public Records Law because the city failed to timely file or produce the transcript to the newspaper upon request, *The News Herald* reported.

In his ruling, Judge Chris Patterson, of the 14th Judicial Circuit in

Washington County, wrote that, “The bottom line is the whole purpose of governing in the sunshine is so the public knows what is happening with their governing officials.”

He ruled that the city had violated the Sunshine Law and ordered the city turn over a copy of the transcript to the newspaper’s attorneys within 10 days, according to *The News Herald*.

Source: *The News Herald* (Panama City)

Florida State College corrects decade-old Sunshine Law error

JACKSONVILLE – Board members of Florida State College at Jacksonville say they will now correct a Sunshine Law violation that has occurred for more than a decade.

The school provides handouts and keeps audio recordings, reported *The Florida Times-Union*, but the practice of failing to

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keep minutes at its monthly workshops called “strategic conversations,” as well as its budget workshops, came to light after a series of exchanges between the school’s officials and *The Florida Times-Union* staff.

Board of Trustees Chairman Jim McCollum said he assumed audio recordings fulfilled the law, but said that

the college would correct its practice, according to *The Times-Union*.

“If that doesn’t suffice, we were obviously making a mistake,”

McCollum said. “We won’t let it happen again.”

According to Pat Gleason, special counsel for open government with the Florida Attorney General’s Office,

“If a gathering is subject to the Sunshine Law, its minutes must be kept. Meetings have to be noticed, they have to be open to the public, and minutes have to be kept, regardless of how casual they are.”

FSCJ keeps minutes of its voting and operational meetings, according to *The Times-Union*.

Source: *The Florida Times-Union*

Probe clears Miami Beach officials of Sunshine violation

MIAMI BEACH – Prosecutors for the State Attorney’s Office in Miami-Dade cleared two city commissioners of allegations that they violated the state’s Sunshine Law.

An investigation probe was launched following a December 2011 meeting in which Miami Beach commissioners Deede Weithorn and Jonah Wolfson unsuccessfully moved to fire City Manager Jorge Gonzalez, according to *The Miami Herald*.

Several city administrators, including the assistant city manager, who overheard part of a conversation between Weithorn and Wolfson, believed the pair had discussed official business when the

meeting was paused in the moments following the motion to the floor, *The Miami Herald* reported. Reports said the commissioners were seen “leaning in and talking to each other.” Prosecutors did not report who originally filed the complaint.

Although Wolfson acknowledged the discussion, he said he did not remember the contents of the conversation, according to *The Herald*.

Prosecutors said the witness statements provided insufficient evidence of a crime. The investigation officially closed May 24.

Gonzalez later submitted his resignation and stepped down from his position as city manager in July.

Source: *The Miami Herald*

Times-Union files lawsuit against mayor’s office

JACKSONVILLE – *The Florida Times-Union* filed a complaint against Jacksonville Mayor Alvin Brown’s office, alleging violation of the Public Records Law.

According to the complaint, the “action concerns the city’s continuing refusal to release a public record within a reasonable period of time, despite demands from *The Florida Times-Union*,” *The Florida Times-Union* reported.

The suit seeks to compel Brown’s office to provide documents related to the presentation of a budget proposal presented by Brown to the Jacksonville City Council on May 1.

The complaint references a May 16 request for documents related to the budget proposal, after the mayor’s office said no drafts were available hours before the presentation, according to *The Times-Union*. It also mentions a request made in late May for documents related to a new courthouse.

“Every citizen has a right to inspect public records whenever they want to,” said *Times-Union* Editor Frank Denton. “As the newspaper, we have a watchdog responsibility to inspect any records that we want to.”

Source: *The Florida Times-Union*

Pasco County School Board allows cameras in classrooms

PASCO COUNTY – The Pasco County School Board approved revisions to the student code of conduct, allowing students to take photographs while on school grounds, except in areas where there is a reasonable expectation of privacy, such as in restrooms, locker rooms or the school clinic, *Tampa Bay Online* reported.

The amendments were approved despite concerns by several board members that allowing cameras in classrooms could provide the opportunity for students to bully by taking photos at school and uploading them on Facebook or other websites, according to *Tampa Bay Online*.

The board formerly considered other policies, such as requiring students to ask the permission of the subject, such as a classmate or teacher, before taking a photo or video, but agreed such a policy would be difficult to monitor and enforce.

The amendment to the code of conduct does not prevent disciplinary action if use of such a camera violates another school policy.

Source: *Tampa Bay Online*

PRIVACY

Judge denies motion to dismiss Walton County lawsuit

DEFUNIAK SPRINGS – A judge denied a motion to dismiss a lawsuit, accusing the Walton County Commission of violating the state's Sunshine Law.

The charge is the most recent in a string of lawsuits filed by resident Suzanne Harris against Walton County Commissioners. It alleges that county commissioners violated a 2009 order prohibiting county commissioners from using personal email accounts to conduct official business, according to

the *Northwest Florida Daily News*.

The lawsuit also alleges that Commissioner Scott Brannon intentionally circumvented the 2009 order, which was signed as part of a settlement agreement in an earlier Sunshine lawsuit.

Circuit Court Judge Howard LaPorte's order denying the motion came on the same day as a decision by State Attorney Bill Eddins' office to refrain from seeking criminal contempt charges against Brannon.

Source: *Northwest Florida Daily News*

ACCESS MEETINGS

Martin County School Board members accused of violations

STUART – The Florida Department of Law Enforcement and the State Attorney's Office in Fort Myers launched an investigation into whether three members of the Martin County School Board violated the state's Sunshine Law.

The investigation arose out of a lawsuit filed by the Sarasota-based nonprofit advocacy group, Citizens for Sunshine, against three members of the board, charging that members of the board violated the state's law by making an unannounced visit to Stuart Adult Community High School, according to *Scripps Treasure Coast*.

The three board members admitted to having visited the school, talking to students and teachers and touring the facility but deny violation of the state's

open government laws.

The state's Sunshine Law requires prior notice where "two or more members of the same elected or appointed public board or commission meet to discuss or take action on any matter which may foreseeably come before them in their official capacity."

Citizens in the Sunshine requested to enjoin any action as a result of the members' school visit, *Scripps Treasure Coast* reported. Gov. Rick Scott asked the State Attorney's Office in Fort Myers to join the investigation after the State Attorney's Office in Fort Pierce was removed from the case, following a finding of a potential conflict of interest.

Source: *Scripps Treasure Coast*

Activist sues Sanford over records

SANFORD—A political activist sued Sanford, accusing the city of willfully violating Florida's Public Records Law.

Charles Grapski first started making his request in April for police-made video records related to the case against George Zimmerman for the death of Trayvon Martin, according to the *Orlando Sentinel*.

Grapski has not received the records or been given a reason for their exemption, according to the Grapski's attorney, Lawrence G. Walters, reported

the *Orlando Sentinel*.

Some of the records were previously available on the city website but were removed at the request of Special Prosecutor Angela Corey, the *Orlando Sentinel* reported.

Sanford has received hundreds of public records requests from news organizations seeking information related to the case and the police investigation.

Source: *Orlando Sentinel*

ACCESS RECORDS

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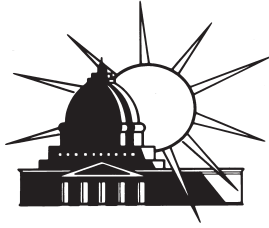
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High Court strikes down FCC fines for “indecenty”

The title from the Beatles hit song “The Long and Winding Road” may well resonate with broadcasters after the U.S. Supreme Court’s recent decision in *Fox Television Stations, Inc. v. FCC* and denial of certiorari in *FCC v. CBS Corporation*.

For nearly a decade Fox, ABC and CBS have been wrangling with the FCC over changes in the agency’s policy on broadcast indecency—specifically, a change in the way the FCC regulated fleeting expletives and brief images of nudity in television programs. While the Court sided with broadcasters, many believe the standard established to regulate content on broadcast television and radio has hit a dead end.

Broadcast television and its affiliates along with radio stations are held to a stricter standard of regulation than are other media. In *FCC v. Pacifica* (1978), the Supreme Court ruled speech on the

radio or television was more pervasive and accessible to children and the FCC could set standards as to when “indecent” speech could be aired and what specific language could be proscribed. In *Pacifica*, the Court determined that the FCC could fine a New York radio station for airing George Carlin’s “Filthy Words” monologue during daytime hours.

The Court left open the question of when an “occasional expletive” could be sanctioned. For years, the regulatory road seemed fairly straight. From 1978 to 1987, the FCC did not sanction any television or radio station stations for violating broadcast-indecency regulations.

In 1987, the FCC announced it would use the “generic definition” set forth in *Pacifica*. The FCC claimed its following of *Pacifica* was too narrow and regulators would look beyond the seven dirty words. It would determine whether the words or depictions were shocking or vulgar and whether the incident was fleeting or isolated.

In 2001, the FCC released a policy statement as to the type of material within the scope of indecency and how the agency would “police” the material. The criteria included: whether the material was sexual in nature, whether it dwelled on the material or repeatedly described the sexual activity and whether it was meant



Tiffany Villager

to pander or have shock value. There now seemed to be a detour in the road, but the road signs were unclear.

The *Fox*, *ABC* and *CBS* cases all dealt with either a “fleeting expletive” or a brief image that included nudity – profane language by Cher and Nicole Richie at the Billboard Awards shows, a seven-second segment of an actress stepping out of the shower in “NYPD Blue” and Janet Jackson’s wardrobe malfunction during the 2004 Super Bowl halftime show.

The cases were troublesome for broadcasters because of the marked change in implementation and enforcement of FCC policy. There seemed to be inconsistency in punishment of “fleeting expletives” and brief nudity. For example, sanctions were not levied for profanity in “Saving Private Ryan” or the nude images in “Schindler’s List” when these programs aired on broadcast television.

In the recent decision in *Fox v. FCC*, the Supreme Court held Fox and ABC (the cases were joined) were not given fair notice of the FCC’s change in regulation and the due-process rights of the broadcasters were violated. The First Amendment issue would be left for another day.

Beyond the issue of how the FCC enforces these rules, many question whether this stricter standard is necessary in light of technological changes over the years. When *FCC v. Pacifica* was decided in 1978, parents did not have the V-chip or other blocking devices and cable and satellite television had not flooded the airwaves with hundreds of channels from which to select. Justice Ruth Bader Ginsburg, in her concurring opinion in *Fox v. FCC*, wrote that “time, technological advances, and the Commission’s untenable rulings... show why *Pacifica* bears reconsideration.”

It is clear from the Court’s take in these cases that the FCC will be enforcing broadcast indecency and that fleeting expletives and brief nudity are within their purview. The journey continues, though, for those who believe regulation of broadcasting should follow the same road as its media counterparts.

Tiffany Villager is director of First Amendment studies for the First Amendment Center at Vanderbilt University and the Newseum. In addition to coordinating research projects for the Center, she oversees the annual National First Amendment Moot Court Competition.