
THE BRECHNER REPORT

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Police chief resigns following grand jury findings

LAKELAND – Lakeland Police Chief Lisa Womack resigned following the release of the grand jury presentment and a no-confidence vote by Lakeland Police Department (LPD) employees, according to The Ledger (Lakeland).

The presentment, released after being sealed for almost a year, was highly critical of many officials, including Womack, The Ledger reported. The presentment suggested the chief should be dismissed and criticized LPD public information officer Ann Dinges and LPD lawyer Roger Mallory. The presentment

also questioned city manager Doug Thomas for not evaluating Womack in writing.

The grand jury investigation began after The Ledger published a series of articles regarding its difficulty obtaining records from the LPD, the paper reported. In one of the articles, Womack told a reporter that the LPD often plays a “cat-and-mouse” game with the media over records requests.

The grand jury conducted their own

investigation and heard from over 20 witnesses on the difficulty of obtaining records from the LPD, according to The Ledger. The state attorney’s office also used undercover officers to request records to illustrate that such requests were not handled properly.

The 2nd District Court of Appeals ruled the presentment should be unsealed, The Ledger reported. City officials spent approximately \$225,000 in attorney’s fees to keep the presentment sealed.

Source: The Ledger (Lakeland)

**ACCESS
RECORDS**

Jacksonville newspaper wins open meetings suit

JACKSONVILLE – Circuit Judge Waddell Wallace ruled that the city’s private discussions involving police and fire pension reform were subject to the Sunshine Law, according to The Florida Times-Union.

Wallace granted summary judgment for The Times-Union, saying that the negotiations between the city and police and fire unions should have been open to the public, according to the paper. Wallace also mentioned that no notice was given and no minutes were taken at these meetings, which violated the Sunshine Law.

“This was a victory primarily for the

people of Jacksonville, who have the right to see their government function and to participate as they desire,” said Frank Denton, the editor of The Times-Union.

The pension negotiations stemmed from a federal lawsuit questioning a previous agreement between the city and unions, The Times-Union reported.

The federal court ordered the parties to negotiate, ruling that such talks were privileged and could occur privately under the federal rules.

The summary judgment order forbids any further discussion of the pension fund in private, according to the opinion. If the parties go back to federal court, they must

inform the court that they are obligated to comply with Florida’s Sunshine Law and should attempt to seek a waiver of the federal rule on private mediation. If the federal court denies the waiver after the parties have taken “all reasonable steps” to seek the waiver, and orders private mediations, the parties must comply and will not be violating the Sunshine Law, according to the opinion.

The city of Jacksonville said they are still determining how to respond to Wallace’s ruling, according to The Times-Union.

Source: The Florida Times-Union, Denton v. Brown et al., No. 16-2013-CA-5799

**ACCESS
MEETINGS**

Lawyer sues Scott, Bondi over public records

TALLAHASSEE – A Tallahassee lawyer filed lawsuits against Gov. Rick Scott and Attorney General Pam Bondi for allegedly failing to comply with Florida’s Public Records Law, according to The Associated Press.

Steven Andrews accused the Scott administration of altering calendars, using private email addresses to discuss official business and delaying the release of certain records for more than a year,

the AP reported.

Andrews accused Bondi, in a separate lawsuit, of refusing to produce electronic meeting notes and emails from private accounts dealing with official business, according to the AP.

Andrews said he filed the lawsuits because he has not received records that he requested, the

AP reported.

“We finally got tired of them violating the Florida Constitution and not producing public records,” Andrews said.

Andrews is involved in a land dispute lawsuit with the state concerning the purchase of property near the governor’s mansion, according to the AP.

Source: The Associated Press

**ACCESS
RECORDS**

Deputy accused of violating privacy sued

OCALA – An Ocala woman filed a lawsuit against a former Marion County deputy and other government officials for wrongfully accessing her information on Florida’s Driver and Vehicle Information Database, according to the Ocala Star Banner.

Kellean Truesdell alleges former Sgt. Clayton Thomas improperly accessed her personal information, the Star Banner reported. She also included various sheriff’s office officials, the Florida Department of Law Enforcement

and the state Department of Highway Safety and Motor Vehicles in the suit for failing to protect her privacy. Thomas, a court bailiff, resigned following the investigation.

Attorney General Pam Bondi asked the judge to dismiss the lawsuit, according to the paper. Bondi argued that law enforcement officers may access driver information in the database as long as it is not used for economic gain.

Bondi also argued that only the U.S. attorney general can sue a state for

improperly accessing driver information under the 1994 Drivers’ Privacy Protection Act, the paper reported. The law was created to regulate interstate commerce, which Bondi argues is not the issue here.

Truesdell also alleges that Thomas accessed thousands of other drivers’ information, most of which were women, according to the paper. She is seeking class-action status for the more than 42,000 victims.

Source: Ocala Star Banner

‘Textgate’ civil lawsuit settles

ORANGE COUNTY – Several Orange County officials accused of violating Florida’s Public Records Law have agreed to enter settlement discussions in a pending civil lawsuit, according to the Orlando Sentinel.

Citizens for a Greater Orange

County, a community group, filed a civil lawsuit against the officials involved in the “textgate” scandal, the Sentinel reported. This suit is separate from the criminal investigation conducted by the state attorney’s office and the Florida Department of Law Enforcement, which resulted in \$500 fines for each official.

The civil settlement between Citizens for a Greater Orange County and the officials stipulates that the county will pay \$90,000. Each party will also be responsible for their own attorney’s fees, but the county will pay mediation fees, according to the settlement agreement.

Citizens for a Greater Orange County estimated in March that they had spent approximately \$50,000 in legal fees in this case, the Sentinel reported. Orange County officials estimated their legal fees at \$158,000 for the “textgate” scandal.

Last year, Orange County commissioners blocked a referendum for paid sick time, according to the Sentinel. Public records indicate that several of the commissioners had been in contact with lobbyists who opposed the referendum, but text messages concerning the matter had been deleted or lost.

Source: Orlando Sentinel

**ACCESS
RECORDS**

Law enforcement agencies able to monitor cellphone data

WASHINGTON, D.C. – Local and state police agencies have become increasingly able to collect and monitor cellphone data, Florida Today reported. According to public records requests by USA Today and Gannett newspapers and TV stations, hundreds of law enforcement agencies have access to new technology that enables real time cellphone monitoring.

The requests reveal that one in four law enforcement agencies connect to cell towers to collect information on any phone connected to that tower over a specific period of time, Florida Today reported. Approximately 25 police agencies said they owned a Stingray, a device that functions as a fake cell tower to intercept calls.

Miami-Dade police are among the

law enforcement agencies in Florida that own a Stingray, according to the paper. A prosecutor for two central Florida counties told the paper he has handled many requests for Stingray surveillance.

Such access to technology and inconsistency in privacy law has drawn concerns from privacy advocates, legislators and citizens, Florida Today reported.

“We have to be careful because Americans deserve an expectation of privacy, and the courts are mixed right now as to what is an expectation of privacy when using a cellphone,” said U.S. Rep. Dennis Ross, R-Fla. “More and more, we’re seeing an invasion of what we would expect to be private parts of our lives.”

Source: Florida Today

Clerk wins public records suit

ESCAMBIA COUNTY – The 1st District Court of Appeals ruled in favor of Escambia County Clerk of Courts Pam Childers in a public records case, according to NorthEscambia.com.

Childers refused to provide the names of current grand jury members to requestor Kevin Wood in January 2013, NorthEscambia.com reported. Wood sued, accusing Childers of improperly withholding the information in violation of Florida’s Public Records Law.

Wood argued that the list of grand jurors was an administrative record

of the court and not part of grand jury proceedings themselves, according to the circuit court opinion. Grand jury proceedings are exempt from public disclosure under state law.

The opinion distinguished administrative records from court records and found that since the grand jury is an extension of the court, a list of grand jurors qualifies as a confidential court record. Confidentiality applies to all grand jury proceedings, according to the opinion.

Source: NorthEscambia.com, Wood v. Childers, No. 2013-CA-000877

**ACCESS
RECORDS**

1st DCA denies rehearing on teacher data

TALLAHASSEE – The 1st District Court of Appeals refused to rehear arguments regarding the release of information used in teacher evaluations, according to The Florida Times-Union.

The court ruled in November that “value added” teacher data are public records, the paper reported. The ruling clarifies that the data is not exempt under a state law that delays the release of teacher information for a year.

The Florida Times-Union sued the Florida Education Association (FEA) and the Florida Department of Education to compel release of “value added” teacher data, which is the difference between a student’s actual progress in class and statistically predicted progress, the paper reported.

“Value added” data is only half of a teacher’s evaluation, the paper reported. The Times-Union argued that since this data wasn’t a full evaluation, it should not be exempt from release.

The FEA or the Department of Education may still ask the Florida Supreme Court to review their arguments within 30 days of the Jan. 17 refusal to rehear the arguments, according to the paper.

Source: The Florida Times-Union

THE BRECHNER REPORT

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Appeals court sides with media, releases murder case documents

JACKSONVILLE – The 1st District Court of Appeals overturned an order by a Jacksonville circuit judge that imposed judicial review on all documents in a murder trial before they were released, according to The Florida Times-Union.

Circuit Judge Russell Healey originally imposed a 30-day delay on all documents released to the public regarding the case so they could be reviewed first, the paper reported. Several Jacksonville media outlets, including The Times-Union, appealed Healey’s ruling.

Healey said he wanted to review all documents in this case before they were released to the public following the release of some of the defendant’s letters

containing racially insensitive content while he was in jail, according to The Times-Union. Healey believed continued document releases could jeopardize the defendant’s right to a fair trial, the paper reported.

Both parties may still ask for a protective order on certain documents they feel should not be released to the public, according to the paper. In that case, any objections to release will be considered at an evidentiary hearing.

“It’s a procedure that’s fair to the defendant and is also fair to the public,” George Gabel, attorney for The Times-Union, said.

Source: The Florida Times-Union

Law firm challenges new online advertising rules

TALLAHASSEE – A Florida law firm is challenging rules that regulate online legal advertisements, according to The Miami Herald.

The personal injury firm of Searcy Denney Scarola Barnhart & Shipley filed a lawsuit in federal court, claiming the rules are too vague and violate the First Amendment, according to The Herald. The rules were adopted by the Florida Supreme Court in January 2013.

Searcy Denney challenged the rules when The Florida Bar determined that content on several of the firm’s websites was not “objectively verifiable,” The Herald reported. The rules require all advertisements to meet this standard. The rules were expanded to apply

this standard to websites in addition to traditional forms of advertising, according to The Herald.

“The framework is designed to avoid lawyers misleading the public,” Elizabeth Tarbert, chief ethics counsel of The Florida Bar Legal Division, told The Herald.

Searcy Denney asked the Bar to review several of its websites, according to the paper. The Bar found that some of the statements on Searcy Denney’s sites were not objectively verifiable, including mentioning past successes, The Herald reported. The Bar also determined that the firm’s LinkedIn profile listed specialties and an unsolicited client testimonial, which violated the new rules.

Source: The Miami Herald

FIRST AMENDMENT

Correction

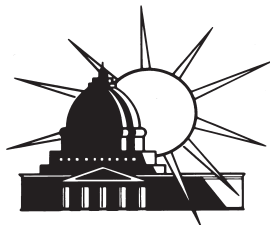
In an early version of the January 2014 issue, The Brechner Report erroneously stated that a Sarasota commissioner admitted to a Sunshine Law violation. While the commissioner settled a pending lawsuit with Citizens for Sunshine, the settlement did not contain an admission of any violation of the Sunshine Law. The Brechner Report regrets the error.

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Times-Union decision has broad Sunshine implications

After the city of Jacksonville demanded the police and fire unions collectively bargain pension benefits, Jacksonville policemen and firefighters along with union representatives filed suit in federal court to protect a 30-year agreement previously made between the city of Jacksonville and the Jacksonville Police and Fire Pension Fund Board of Trustees (“pension fund”). Shortly after the suit was filed the parties moved the federal court for appointment of a mediator. After the order was entered appointing the mediator, the parties negotiated in secret and reached an agreement for a comprehensive new pension plan, which lowered benefits for new hires, but not for veterans and retirees — an important public policy shift. A suit was filed on behalf of The Florida Times-Union in state court based on the Florida Sunshine Law asking the judge to nullify the agreement and require the city, unions and pension fund to negotiate any new plan in full public view.

The Back Page

By **George Gabel,**
Timothy Conner &
Jennifer Mansfield

For years the pension fund has negotiated directly with the city of Jacksonville for pension benefits for the city’s firefighters and policemen. The pension fund took the position in the lawsuit that it is not a bargaining unit or agent of the police or firefighter unions and that, in any event, the unions waived their right to collective bargaining in favor of the pension benefits granted to the employees under the 30-year agreement.

In a summary judgment issued on Dec. 31, 2013, Circuit Court Judge Waddell Wallace held (1) the mediation settlement agreement is void ab initio; and (2) the city and pension board are enjoined from meeting with representatives of the unions to negotiate pension benefits without complying with the Sunshine Law, including any future mediation conferences held in federal court civil action or any other civil action subsequently filed. Judge Wallace also reserved jurisdiction to determine attorneys’ fees and costs.

The judge’s order was based upon the conclusion that pension



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benefits are a mandatory subject of collective bargaining and that the pension fund was an agent for the unions in negotiating the benefits. He also noted that collective bargaining agreements are limited to three-year terms by Florida Statute.

Judge Wallace stated:

“Evasive devices used to circumvent the dictates of the Sunshine Law are condemned and cannot be upheld. Thus,

the Court finds that the federal mediation sessions were in violation of the Sunshine Law because they included negotiations over pension benefits contained in the Restated Agreement. As bodies subject to the Sunshine Law, the Pension Fund Board and City were required to conduct their negotiations in the public realm.”

A Times-Union editorial on Jan. 1, 2014, said:

“The year 2014 will be huge for the City of Jacksonville. Big decisions need to be made. If they aren’t successful, the City’s future will be in jeopardy. Like a family burdened by debt, the City of Jacksonville must deal with pension obligations that are stifling. Increasing pension costs are beginning to affect the City’s quality of life, ranging from declining library services to decreasing numbers of police officers. The basic elements of an acceptable pension deal are understood. There must be shared sacrifice. Pension benefits must remain good enough to retain and attract quality police officers. And a partial solution is not good enough.”

As a result of Judge Wallace’s decision, all of the pension negotiations for public employees in Jacksonville will be conducted in public, and the federal court should not be available in Jacksonville — or any other cities in Florida— to evade the state’s Sunshine Law. The same should be true in any other states with open government laws. The decision may also give the city’s pension reform task force some grounds for relief from its current stifling pension obligations.

George Gabel Jr., Timothy Conner and Jennifer Mansfield are partners at Holland & Knight. They represented The Florida Times-Union in their lawsuit for public access to pension negotiation meetings.