
THE BRECHNER REPORT

Volume 34, Number 9 ■ A monthly report of mass media law in Florida
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida

September 2010

Judge throws out \$10M libel verdict against paper

ST. PETERSBURG – A \$10 million libel verdict against the parent company of the *St. Petersburg Times* has been overturned due to a lack of evidence. The case centered on articles appearing in the newspaper in 2003 concerning Dr. Harold L. Kennedy's work at the Bay Pines

LIBEL

Veterans Affairs Medical Center. Pinellas-Pasco Circuit Judge Anthony Rondolino wrote in his two-page ruling that the evidence was "insufficient to cross the threshold required by the First Amendment." Paul Tash, chairman and CEO of

Times Publishing Co., said the ruling was expected. "Despite the jury's verdict, we remained confident in the work and expected to eventually reach this result," Tash said.

Kennedy has filed an appeal with the 2nd District Court of Appeal.

Source: *St. Petersburg Times*

Commissioner resigns, pleads guilty to Sunshine Law charge

PALM BEACH COUNTY – A member of the Palm Beach County Commission has pleaded guilty to extortion, perjury and violating the Open Meetings Law. Jeff Koons, 62, entered his plea just days after his arrest.

Koons will not serve jail time but will pay an \$11,500 fine in addition to five years of probation. He could have faced up to 16 years in prison.

Koons was charged with a felony count of extortion; misdemeanor perjury; and a criminal violation of the Sunshine Law. Koons, a Democrat, resigned from office the day of his arrest. He had been a member of the commission since 2002, and had previously spent 11 years as a West Palm Beach city commissioner.

The charges stem from phone calls

ACCESS MEETINGS

Koons made in connection with a Lake Worth Lagoon environmental project he supported. Koons made telephone threats to the representative of a prominent businessman who opposed parts of the project. Koons initially lied about the phone calls to investigators, resulting in the perjury charge.

The Open Meetings Law charge was based on private discussions of the project between Koons and a fellow member of the Lake Worth Lagoon Initiative. The Initiative is an advisory group for Palm Beach County. The other member, county employee Richard Walesky, denies wrongdoing and has not been charged with violating the Sunshine Law.

Source: *The Palm Beach Post, South Florida Sun-Sentinel (Fort Lauderdale)*

Judge: Baseball deal can proceed

SARASOTA – A circuit judge has ruled in favor of Sarasota County following a trial on alleged violations of the Open Meetings and Public Records laws. Two citizen groups—Citizens for Responsible Government and Citizens for Sunshine—sued the county, seeking to set aside a \$31.2 million contract with the Baltimore Orioles.

Judge Bob Bennett ruled that the contract stands and that the county and city of Sarasota can issue approximately \$26 million in bonds to improve a

stadium. The citizen groups argued that during negotiations for the spring training contract, officials violated the Sunshine Law by communicating by e-mail. Bennett ruled that three county commissioners unintentionally violated the Sunshine Law but should not be sanctioned.

In a separate investigation, the Sarasota County Clerk of Courts found that neither the county nor Larry Arnold, its director of community services, improperly influenced bids on the contract.

Source: *Sarasota Herald-Tribune*

NCAA, FSU ordered to pay \$325K in fees

TALLAHASSEE – The National Collegiate Athletic Association (NCAA) and Florida State University (FSU) will pay a total of \$325,000 in attorney's fees to media outlets who successfully sued for access to records in a cheating scandal. The fee award is the result of a mediation of the disputed legal fees.

The Florida Supreme Court upheld the 1st DCA's ruling that documents related to the case, including those the NCAA kept on a password-protected website that were viewed by FSU attorneys, were public.

The NCAA eventually vacated several FSU football victories and imposed other sanctions as result of its investigation. The NCAA will pay \$260,000 of the fees, with FSU paying the remaining \$65,000.

"We hope that the attorney's fee payment here sends a strong message to government agencies – and private entities seeking to impose secrecy," Carol Jean LoCicero, an attorney for the media in the case, said.

"Don't mess with public records in Florida. We will fight for open government and hand you the tab," LoCicero said.

Source: *Orlando Sentinel*

Office Depot sues AG to block release of records

TALLAHASSEE – Office supply corporation Office Depot is suing the Florida Attorney General's Office in an effort to block the release of documents in response to a public records request.

Following an investigation by the AGO, Office Depot recently agreed to

pay \$4.5 million in refunds to customers whose pricing plans were switched by Office Depot.

A reporter for the *Naples Daily News* made a public records request to the AGO for documents related to the investigation. Office Depot then filed

suit, claiming the documents are exempt from the Public Records Law as trade secrets.

The suit is pending in circuit court in Tallahassee.

Source: *South Florida Business Journal*

Judge: Admissions in jail records exempt from law

FORT LAUDERDALE – Defense attorneys for teens accused of setting a former friend on fire have appealed a circuit judge's ruling to release jail phone records. Circuit Judge Carlos Rebollo ordered that conversations be edited to remove any admissions, which he considered exempt from the Public Records Law.

Attorneys for the media had argued that there was no such exemption to the Public Records Law and that the full recordings

should be released. The *South Florida Sun-Sentinel* (Fort Lauderdale) had requested the records under the Public Records Law.

Defense attorneys argued the recordings were exempt and would negatively impact the fairness of the trial.

Matthew Bent, 15, Denver Jarvis, 15, and Jesus Mendez, 16, are being tried as adults for the attempted murder of 15-year-old Michael Brewer. Prosecutors allege the teens poured rubbing alcohol

on Brewer and set him on fire last October.

"The release of these tapes will drastically affect the child's right to a fair trial, considering all the further pre-trial publicity in this case," Chief Assistant Public Defender Gordon Weekes said upon filing the appeal on behalf of his client, Bent.

The 4th DCA in West Palm Beach has stayed any release or editing of the conversations pending the appeal.

Source: *South Florida Sun-Sentinel*

Resident sues for access to polygraph

HIGH SPRINGS – A pre-employment polygraph test is the subject of a public records lawsuit in High Springs.

Resident Robyn Rush is suing the city for the test results of an applicant for a part-time position at the High Springs Police Department.

The Florida Attorney General's Office has notified both parties that it appeared the city was complying with the Public Records Law, according to *Alachua County Today*. But Rush contends that the redacted documents provided by the city are not sufficient and disagrees with its interpretation of a statutory exemption.

The applicant, Clinton Knowles, is a reserve officer and was selected by the police chief as the top candidate but was not approved by the city manager.

Rush is represented by University of Florida law Professor Emeritus Joe Little. Little has requested an accelerated hearing.

Source: *Alachua County Today*

October hearing set in effort to resolve High Springs fee dispute

HIGH SPRINGS – An October hearing date has been set to determine attorney's fees in a public records case. In January, the 1st DCA ruled in favor of citizens Michael Canney and Charles Grapski, who sued the city after being denied a document before a public meeting.

The 1st DCA ruled that the city violated the Public Records Law in 2006 when it did not provide an election certification record prior to its approval at a commission meeting.

The 1st DCA also ruled that the city

must pay Canney and Grapski's attorney's fees for the public records portion of the suit.

Canney and Grapski estimated costs and fees in excess of \$200,000. The High Springs City Commission recently rejected a \$100,000 settlement offer and presented a \$30,000 counter offer. The city later withdrew the counter offer.

Circuit Judge Victor Hulslander will determine the attorney's fees amount after the Oct. 18 hearing.

Source: *High Springs Herald*

Media abandons bid to access SeaWorld video of whale attack

ORLANDO – Several media outlets have withdrawn from seeking access to SeaWorld surveillance videos held by the Orange County Sheriff's Office.

The videos are thought to depict the Feb. 24 attack by killer whale Tilikum on his trainer, Dawn Brancheau. Brancheau's family wants to seal the records.

Media outlets have contended that the videos are public under the Public Records Law and no exemption applies.

The parties previously agreed to mediate the case. Brancheau's family

rejected a settlement offer by the media to not publish or air any images in exchange for the right to inspect the video.

The Sheriff's Office ultimately released a detailed report describing the contents of the video, leading to the media's decision to back out of the suit, according to the *Orlando Sentinel*. The *Sentinel* and other Tribune Co. outlets had partnered with The Associated Press, the *Tampa Tribune* and *The Ledger* (Lakeland) and others to gain access to the videos.

Source: *Orlando Sentinel*

FAF seminar offers Sunshine practice advice

The First Amendment Foundation is presenting a Sunshine Litigation Seminar on Saturday Sept. 25, 2010, at the Tampa Marriott Waterside Hotel and Marina in Tampa.

The all-day session is geared for attorneys interested in learning more, including practical tips, on litigating open government issues.

Lunch is included and will feature a keynote address by Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press. This course has been approved by The Florida Bar for 7.5 CLE hours.

The First Amendment Foundation will also celebrate its Silver Anniversary the evening of Sept. 25 by hosting a fundraising dinner with guest P.J. O'Rourke, noted author and political pundit.

The cost to attend the Sunshine Litigation Seminar is \$275, which includes lunch. A combination package is available for those wishing to also attend the First Amendment Foundation's Silver Anniversary Dinner with P.J. O'Rourke. The cost to attend both the seminar and the dinner is \$425.

Registration information is available at www.floridafaf.org. Call the First Amendment Foundation at 850-224-4555 with questions.

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The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. *The Brechner Report* is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

ACCESS MEETINGS

Polk County finds success with interactive webcast initiative

BARTOW – Interactive webcasts are a new tool Polk County is using to engage citizens in local government. But despite the success of the webcasts, budget cuts might hinder the program.

The county held its first e-Town Hall Meeting last year. County commissioners met at the Polk Government Television (PGTV) studio while viewers asked questions via the Internet. More than 400 people logged on to view the meeting or submit questions.

PGTV has since increased its interactive webcasts to at least two per week, including other agencies such as Polk Housing, Veteran Services and the Transit Authority.

“Being able to open up government meetings to the residents who can't make it to the county building is a massive opportunity for us to reach them in another way,” Nate Graham, freelance production assistant for PGTV, said.

Freelancers like Graham are often the first to feel the effects of county budget cuts, PGTV Program Director Joan Davies said.

But Davies hopes that the support of the Polk County Commission so far in backing the webcasts will ensure budget cuts don't affect the program.

Davies said PGTV is pursuing grants to help fund the interactive webcasts.

Source: News Chief (Winter Haven)

Developer alleges Sunshine Law violated in application process

ORLANDO – The owners of a 1,440-acre ranch whose redevelopment plan was denied by Orange County have sued the county commission, alleging Sunshine Law violations.

Rolling R. Ranch Ltd. owns the property and proposed building a \$1.2-billion mixed-use community with housing, retail and office spaces, a research park and trails.

The Orange County Commission declined to submit Rolling R's application to the state Department of Community Affairs.

In its suit filed in the 9th Judicial Circuit, Rolling R alleges that

commissioners violated the Sunshine Law by making improper public statements against the plan.

The suit also alleges that Commissioner Bill Segal used Twitter and Facebook during the March 9 hearing on the project to announce he had voted against it.

Commissioners say they denied the plan due to the need for a bridge that would disturb the rural nature of the area in east Orange County.

Rolling R seeks an overturn of the denial and transmission of the application to the Department of Community Affairs.

Source: Orlando Business Journal

Town Council orders task force to comply with Sunshine laws

PALM BEACH – A task force created by the Palm Beach Town Council to monitor the county budget must meet in the Sunshine, according to a decision by the council.

The budget task force was established in May by a resolution that outlined the group's mission to make recommendations to the council and therefore be subject to the Open Meetings and Public Records laws.

However, at the first meeting of the

task force, it voted 4-3 to operate outside of open government laws unless the council gave instructions otherwise.

The task force determined that it was a fact-finding entity and therefore did not need to comply with Sunshine laws.

The council, however, directed the task force to operate under the Open Meetings and Public Records laws because its duties go beyond fact-finding.

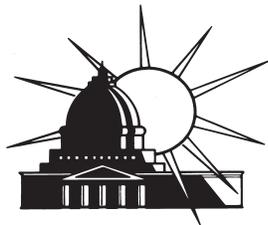
Source: Palm Beach Daily News

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September 2010



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Did Congress just exempt the SEC from FOIA?

Like many others, we at the Project on Government Oversight were outraged to learn this summer that a provision buried in the financial reform bill may allow the Securities and Exchange Commission (SEC) to ignore a vast array of Freedom of Information Act (FOIA) requests. But there is still widespread disagreement over the intent of this provision, and questions remain as to how it will be applied.

In the meantime, Senators Patrick Leahy (D-VT), Charles Grassley (R-IA), John Cornyn (R-TX), and Ted Kaufman (D-DE) introduced legislation to repeal Section 929I of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the provision that prohibits the SEC from publicly disclosing any “records or information” provided by its regulated entities if the SEC uses the information for “surveillance,

risk assessments, or other regulatory and oversight activities.”

The issue came to a head as part of an ongoing FOIA dispute between the SEC

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By Michael Smallberg

and the FOX Business Network. FOX Business sued the SEC in March 2009 for failing to produce documents related to the agency’s botched investigations of the Madoff and Stanford Ponzi schemes. Now the SEC is arguing that a provision in the new law exempts the agency from releasing any documents related to FOX Business’s request.

The vague language in the bill (“other regulatory and oversight activities”) could be interpreted to mean that virtually all SEC activities will be exempt from FOIA. Steven Mintz, FOX Business’s attorney in its case against the SEC, attacked what he described as a “backroom deal that was cut between Congress and the SEC to keep the SEC’s failures secret,” and warned that “the next time there is a Bernie Madoff failure the American public will not be able to obtain the SEC documents that describe the failure.”

On the other hand, SEC spokesman John Nester argued that this provision is simply intended to “make certain that we can obtain documents from registrants for risk assessment and surveillance under similar conditions that already exist by law for



Michael Smallberg

our examinations.” He claimed that some companies might be hesitant to provide sensitive documents to the SEC if there was a possibility that the documents could one day be obtained through FOIA.

But FOIA already protects against the release of “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential,” and the SEC already has strict rules in place to protect against the release of information from ongoing investigations.

If nothing else, the SEC’s ongoing efforts to withhold information in the FOX Business lawsuit and other cases would appear to undermine the overall spirit of the Wall Street reform bill, which seeks to improve transparency and accountability across the financial system. The SEC’s position also flies in the face of President Obama’s guidance instructing agencies to adopt a “presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government.”

In fact, a recent audit by the SEC Office of Inspector General (OIG) found that the agency uses “inadequate or incorrect procedures” for responding to FOIA requests and applying exemptions, which has the effect of “creating a presumption in favor of withholding, rather than disclosure, as required by the FOIA.” The audit concluded that the SEC’s FOIA disposition rate is “significantly lower when compared to all other federal agencies.”

Furthermore, there is evidence to suggest that the SEC routinely keeps investigations open so that it can take advantage of a FOIA exemption that protects against the disclosure of information compiled for law enforcement purposes if such disclosure “could reasonably be expected to interfere with enforcement proceedings.”

All in all, there’s no question that the SEC is in need of some serious transparency. Now is certainly not the time to give the SEC even more authority to keep its records under a veil of secrecy.

Michael Smallberg is an investigator for the Project On Government Oversight. To learn more about POGO’s work on the SEC and other transparency issues, visit www.pogo.org.