

The Voice

OF THE FLORIDA BAR GOVERNMENT LAWYER SECTION

Message from the Chair:

Visibility of the Government Lawyer

By Ward P. Griffin, Chair, Government Lawyer Section



WARD GRIFFIN

It has been (and continues to be) my privilege to serve as the Chair of the Government Lawyer Section this year. Our Section strives to address the unique issues facing attorneys in the public sector, and it is indeed humbling to serve as Chair of the Section representing *all* government lawyers – a group consisting of approximately 15% of The Florida Bar’s membership – regardless of the level of government, branch of government, or subject matter.

In approaching our actions as an Executive Council, we are guided by the mission statement of the Section:

“The Government Lawyer Section is dedicated to promoting the professionalism and competence of its members; improving the delivery of legal services to all governmental entities; improving the administration of the legal system; and enhancing The Florida Bar’s and the public’s understanding of the unique needs of the government attorney.”

The legal profession has faced a broad range of issues in recent years, placing enormous pressures on practitioners in both the public and private sectors. For government attorneys, the pressures have been especially acute, with public servants facing a dual threat of declining budgets and personal attacks against the

sacrifices that many have made in their careers.

Evidence of these pressures can be found in the Bar’s biennial membership survey, which currently is available for downloading from the Bar’s website. The report – “Results of the 2011 Membership Opinion Survey” (January 2012) – shows that, among all categories of Florida Bar members surveyed, local, state and federal government attorneys experienced the greatest percentage decreases in median income between 2005 and 2011. *See Report at 80.*

In the face of these challenges, the recent leadership of our Section has provided a steady hand, offering tire-

less and dedicated service in furtherance of the Section’s mission. I have been honored to follow in the footsteps of recent Section Chairs Mary Ellen Clark and Keith Rizzardi (not to mention the many others who preceded them).

Our Section’s leadership has always worked to keep the issues facing government lawyers at the forefront. To continue those efforts, when I took the gavel as Section Chair in June, I set certain benchmarks to guide the efforts of our Executive Council this year. The first goal was clear: “Secure a dedicated seat for a government attorney on the Board of Governors of The Florida Bar.”

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THE GOVERNMENT LAWYER
SECTION REPORTER

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MESSAGE FROM THE CHAIR

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That goal was buttressed by the leadership of Bar President Scott Hawkins, who submitted to the Board's Program Evaluation Committee a proposal to create a dedicated, non-voting seat for a government lawyer. That goal has been supported by President-Elect Gwynne Young, President-Elect-Designate Eugene Pettis, and many Governors. As of the submission date of this article, the Board of Governors continues to study the proposal.

But implicit in that goal was a larger objective, drawn directly from our Section's mission: Enhance the Bar's understanding of the unique needs of the government attorney. Our Section has been successful in achieving that larger objective.

The Section's Executive Council convened a long-range planning meeting in June, at which it committed to ensuring that at least one Council member would be in attendance at each Board of Governors meeting this year. To date, our Council has fulfilled that commitment.

I believe that the presence of Council members has elevated the visibility of our Section – and of all government lawyers – before the Board. But

moreover, such interaction with the Board has fostered a robust dialogue on the representation of government attorneys, both before the Board specifically and throughout the Bar generally.

As you know, government lawyers continue to serve diligently in sections and on committees, taking on leadership roles and providing insight into the particular issues faced by the public sector. I encourage you to seek out those opportunities for service to the Bar, offering your unique perspective as a government lawyer.

I encourage you to remain engaged in the issues facing our profession, and do not hesitate to contact the Governors elected to represent your circuit to let them know your thoughts, as a government lawyer, on a particular issue.

And finally, I encourage you to remain an active member of the Government Lawyer Section and to become more involved in the Section's activities. As a group comprising approximately 15% of the Bar's membership, our collective voice can be heard far and wide. But the strength of that collective voice is dependent upon your support.

Thank you for your continued membership in the Section. I look forward to speaking again with you soon.

UPCOMING CLEs

April 27, 2012

State & Federal Government & Administrative Practice (SFGAP) Certification Review Course II: Federal (#1380R)

Live & Webcast –

Tallahassee-Leon County Civic Center
Brochure available on GLS website,
www.flgovlawyer.org/cle

June 7, 2012

Practicing Before the Supreme Court (# 1381)

Florida Supreme Court, Tallahassee
(Pre-registration is required). See p. 17.

Learn more at www.floridabar.org/CLE. Search by course number.

Legislative Update

On Friday, March 9, 2012, the Florida Legislature concluded its Regular Legislative Session. Although apportionment will be addressed in an Extraordinary Apportionment Session, this seems an opportune time for reflection.

Throughout the 2012 Legislative Session, The Florida Bar released weekly legislative updates on its website, detailing matters of particular importance to the Bar and its members. The following information was released by the Bar at the conclusion of the ninth (and final) week of the Session.

2012 Florida Bar Weekly Legislative Updates

Ninth Week of 2012 Session Legislative Update

Introduction

This last week of the session was a bit chaotic but both chambers managed to carefully review amendments to avoid passing legislation that had not been previously approved in substantive legislative committees. Overall it was a good session for The Florida Bar.

The Florida Supreme Court issued a decision Friday morning regarding the state Legislature's redistricting plan. That opinion declared the plan apportioning districts for the House of Representative to be constitutionally valid but found the plan apportioning the districts for the Senate to be constitutionally invalid under the Florida Constitution. Pursuant to that document, Gov. Rick Scott must call the Legislature into a Special Session within five days of the Supreme Court's ruling. And, indeed, the governor has called the Legislature into an extraordinary session – starting Wednesday, March 14, for up to 15 days – to go back to work on a Senate redistricting plan.

Below is a list of priority legislative items for The Florida Bar and how they fared:

Budget

The House and Senate agreed upon

a state budget of \$70 billion for fiscal year 2012 - 2013. The budget contains \$1 billion extra for public school funding but has substantial cuts to universities and the Medicaid reimbursement rate for hospitals. The big news on the budget was the release midweek of a circuit court ruling that held invalid the action of the Legislature last year that required members of the Florida State Retirement System to begin contributing 3 percent of their salaries to the retirement system. It is estimated that change saved the state upwards of \$800 million annually.

The state appealed the decision, which avoided the need for any immediate action during this legislative session.

We are pleased to report that the budget also includes a provision that authorizes agency heads to pay for Florida Bar dues and legal education courses for employees required to be members of The Florida Bar.

Court Funding

The proposed \$446 million budget for the state courts system includes no reductions from the current year funding. In addition, in order to avoid revenue shortfalls in the court's trust funds, the Legislature proposed to fund approximately 75 percent of the court budget with general revenue.

The final budget also includes \$4 million for the courts and \$2 million to the clerks, to handle the backlog in foreclosure cases.

The Legislature adopted language that will require the courts to absorb any attorney fees for conflict counsel that exceed the statutory caps of \$3 million. This could potentially require the courts to cut up to \$4 million out of the trial courts budget. This issue will need to be addressed at some point soon, and will require a combination of cost-containment strategies as well as a recognition that capital cases and RICO cases are difficult and complex – and that the current statutory caps need to be adjusted.

The Legislature reduced the Clerks of Court budget by approximately \$30 million, or approximately 7 per-

cent. The Florida Bar worked with the courts and the clerks during the final stages of the budget process, attempting to convince legislators to maintain full funding for the clerks. Unfortunately we were unsuccessful in reducing those budget cuts. The clerks are fearful this reduction will result in 800 jobs being cut and a reduction in the hours of courthouse operations.

Civil Legal Assistance Funding

During budget negotiations, House Speaker Dean Cannon helped secure an additional \$1 million for civil legal assistance funding – bringing the total to \$2 million. Earlier Sen. Ellyn Bogdanoff had successfully pushed the House to agree to increase its offer of funding from only \$100,000 to \$1 million. Of that \$2 million, \$1 million is in recurring general revenue. The extra funding is coming at a critical time for the delivery of legal services to the poor. Falling interest rate income from IOTA accounts has crippled legal aid organizations caused substantial reductions of staff and services.

Mandatory Retirement Age for Judges

The effort to place a constitutional amendment before the voters to increase the mandatory retirement age for judges from 70 to 75 was not successful. Although SB 408 by Sen. David Simmons passed the Senate 38-1, it was never considered by the House.

Judicial Nominating Commissions

A proposal to alter Judicial Nominating Commissions was unsuccessful.

Both SB 1570 by Sen. Simmons and HB 971 by Rep. Matt Gaetz proposed no changes to the involvement of The Florida Bar in the Judicial Nominating Commission process or to the staggered terms of those JNC members nominated by the Bar. Both proposals did, however, change the staggered terms of the JNC members

continued, next page

not nominated by the Bar, to terms of office at the “pleasure” of the governor.

SB 1570 was further amended on the Senate floor, to provide that the change in the staggered terms of JNC members not nominated by The Florida Bar would only apply to those JNC members appointed by the governor after Jan. 4, 2011. After voting for this amendment, the Senate amended HB 971 to conform to the amended Senate bill and passed that measure 24-14. The amended measure went back to the House, where it died in messages.

Conclusion

This has been an outstanding session for The Florida Bar.

Like most successful work, it started with a lot of early preparation by Florida Bar President Scott Hawkins and President-elect Gwynne Young. They began meeting months ago with legislative leaders, advocating our positions and building relationships.

Legislative Committee Co-Chairs Ray Abadin and Ed Scales monitored and guided our efforts throughout the session.

And we always had the daily and steady hand of The Florida Bar’s Executive Director Jack Harkness and General Counsel Paul Hill.

Information on all bills of general interest within the profession can be found in the Bar’s “2012 Bill Reports” at this link: <http://www.floridabar.org>.

[org/DIVEXE/GCBillReport.nsf/WDOCS?OpenView](http://www.floridabar.org/DIVEXE/GCBillReport.nsf/WDOCS?OpenView).

For more detailed information on specific legislation being tracked by the Bar, visit the Legislation Committee’s webpage on the Bar website at this link: <http://www.floridabar.org/cmdocs/bd160.nsf/WDOCS>.



Former Section chairs gathered for a photo at the 2011 Annual Florida Bar Convention in Orlando.

Upcoming Meetings & Events

2012 Annual Florida Bar Convention

June 20 - 23 • Gaylord Palms Resort & Convention Center

(Convention and hotel reservation information: www.floridabar.org)

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Government Lawyer Section Executive Council Meeting

Friday, June 22, 2012 — 1:00 p.m. – 4:00 p.m.

Government Lawyer Section Membership Reception & Claude Pepper Award Presentation

Friday, June 22, 2012 — 4:00 p.m. – 5:30 p.m.

*Times subject to change.
Please visit www.floridabar.org for the
most up-to-date Convention information*

CLE Program Offers In-Depth Perspective on Florida's Legislative Process:

Practicing Before the Legislature (Now Available Online)

By Patrick L. "Booter" Imhof, Program Chair

With the Regular Legislative Session scheduled to run from January 10, 2012, to March 9, 2012, the Government Lawyer Section sponsored a seminar on the legislative process entitled "Practicing Before the Legislature." The course, which had not been offered since 2007, confers 7.5 hours of CLE credit and is currently available for purchase on audio CD (www.floridabar.org/CLE, Course no. 1164). The program is open to lawyers and non-lawyers.

While the program was produced by the Government Lawyer Section, all lawyers – regardless of section membership or practice area – need to know how the legislative process works. The program informs the audience "what they didn't teach you in high school civics," providing an excellent overview of the legislative process. If a person is interested in participating in an organization's grass roots efforts at the Legislature, this course would be an essential element in training.

Program topics included:

- **The Legislative Process**, which provided an overview of how a bill becomes a law by following a bill from introduction through final passage, as well as additional discussion on legislative history.
- **Lobbying and Ethics**, which discussed the Florida law governing registration, reporting, and regulation of lobbyists representing public and private interests, while offering practical tips on dealing with legislators and some of the ethical rules dealing with non-adjudicative proceedings.
- **Overview of Senate Rules and Procedures**, during which the staff directors from the Senate Rules Committee and the House

of Representatives Rules & Calendar Committee reviewed the rules necessary to understand how the system works.

- **Legislative Sunshine**, during which the General Counsel for the House gave an outstanding overview of the public records and public meeting requirements for both the Senate and the House.

Highlighting the program were two simulated sessions that provided the program attendees with direct insights into how the legislative process functions in practice.

During the first session, Senate staff participated in a simulated committee meeting (in a Senate committee room) to show how such a meeting is conducted. The audience enjoyed witnessing the interaction on the committee and how bills are considered, amended, and passed or defeated in committee. The simulation also included an explanation of some of the important rules that apply in the committee setting.

During the second session, Senate and House staff participated in a simulated floor session on the House floor, with program attendees sitting at the members' desks and voting on mock bills. The Clerk of the House was thoroughly gracious and participated as the Reading Clerk. The audience and staff participated in the simulated session by debating bills, making motions, and voting on different pieces of legislation.

The program was very well received. Audience evaluations indicated that the program had good speakers who were very knowledgeable, high-caliber, experienced, and well prepared. A long-time lobbyist noted, "I did not expect to get much

out of this seminar but it turned out to be valuable in a variety of ways."

The evaluations also noted that the simulations brought all of the lectures together, showing how the principles discussed in the lectures are performed in practice. One person noted that "it was good to see how [the Legislative process] actually works." The audience found that the format was interesting and engaging, and the interactive nature of the seminar made it very valuable.

The audience also indicated that the course materials were well organized. The audience also liked the fact that the program was presented in the Senate and House of Representatives.

As noted before, this program is not just for lawyers or members of the Government Lawyer Section of The Florida Bar. It is designed for anyone who is interested in knowing how to participate in the Legislative Process. As Thomas Jefferson said:

"Who will govern the governors? There is only one force in the nation that can be depended upon to keep the government pure and the governors honest, and that is the people themselves. They alone, if well informed, are capable of preventing the corruption of power, and of restoring the nation to its rightful course if it should go astray. They alone are the safest depository of the ultimate powers of government."

For the first time, the program is available on audio CD. So if you missed the program, it is now available for purchase from The Florida Bar. It can be ordered either online, fax, or mail. For more information go to: <http://www.floridabar.org/FBWEB/CLEReg.nsf/zLocations2/SHAL-8LFR67?OpenDocument>.

State and Federal Government and Administrative Practice (SFGAP) Update

By Francine M. Ffolkes, Administrative Law Counsel, Florida Department of Environmental Protection

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Certification should be the capstone for a lawyer's professionalism goals.

~Justice Harry Lee Anstead, April 2003
.....

I. One hundred-two (102) lawyers currently identify themselves as "B.C.S." (Board Certified Specialists) in State and Federal Government and Administrative Practice (SFGAP).

These lawyers are part of a network of specialists in The Florida Bar's certification program that is consistently recognized as a national leader among state programs.

II. Upcoming CLE seminars:

This year's SFGAP Certification Review Course will be held on Friday April 27, 2012, in Tallahassee. This year's review course will focus on Federal Law, i.e., the Federal topics that may appear on the certification exam schedule for May 17, 2012, in Tampa. (See related brochure in this issue.)

III. News from the SFGAP Certification Committee:

A. The inaugural 2007 (8/1/2007 to 7/31/2012) class of certified lawyers can apply for recertification on or before July 31, 2012.

B. In concept sub-specialty tracks within the SFGAP Certification was described in a June 6, 2011, letter to Chairs of interested and affected Sections from the Hon. Cathy M. Sellers, Chair of the SFGAP Certification Committee. Throughout the fall of 2011, ALJ Sellers also made presentations to the Executive Council meetings of the Administra-



tive Law, Government Lawyer, and Environmental and Land Use Law Sections. Written comments were received from the Government Lawyer Section; the City, County and Local Government Law Section; and the Administrative Law Section. The Certification Committee continues its consideration of comments and suggestions from all interested Sections and SFGAP certified lawyers. This year's focus will be on the upcoming May 17, 2012, exam and recertification of the inaugural 2007 class.

C. SFGAP Certification Committee members:

Cathy Miller Sellers, Tallahassee, *Chair* — Term: 2013

Allen Richard Grossman, Tallahassee, *Vice Chair* — Term: 2013

Lawrence Edward Sellers, Jr., Tallahassee, *Board Liaison* — Term: 2012

Kirk Lee Burns, West Palm Beach — Term: 2013

Francine Marie Ffolkes, Tallahassee — Term: 2014

Charles Robert Fletcher, Tampa — Term: 2013

James Aaron Peters, Tallahassee — Term: 2013

Mary F Smallwood, Tallahassee — Term: 2012

Charles Aristides Stampelos, Tallahassee — Term: 2012

William Eldred Williams, Tallahassee — Term: 2012

IV. News and Resources for Board Certified Lawyers:

A. News from the January 2012, Issue 43 of "The Capstone" is available at FloridaBar.org/certification.

B. Certification Awards Applications Available at FloridaBar.org/certification.

Download the forms to nominate a certified lawyer or judge for the BLSE's 2012 certification awards: *The Justice Harry Lee Anstead Award for Florida Bar Board Certified Lawyer of the Year* and the *Award for Excellence in the Promotion of Board Certification*. You or one of your colleagues could be among the distinguished group of lawyers who are previous recipients of these awards. Applications are due May 25, 2012. Contact BLSE Consultant Lisa M. Tipton at (850)561-5769 for more information.

Francine M. Ffolkes is the Administrative Law Counsel for the Florida Department of Environmental Protection. She is SFGAP Board Certified, is a member of the SFGAP Certification Committee and the GLS Executive Council.

Merit Retention of Florida Supreme Court Justices

By Ward P. Griffin, Chair, Government Lawyer Section

With the November elections looming on the horizon, questions remain as to the options that voters will face on the ballot. Who will emerge as the nominees for local, state and national offices? What referenda will be presented for consideration?

Notwithstanding those open questions, one issue facing voters is clear: Whether to retain Justices R. Fred Lewis, Barbara J. Pariente, and Peggy A. Quince on the Florida Supreme Court.

The merit selection and retention of Florida Supreme Court Justices was instituted in the 1970s. The Florida Supreme Court website summarizes the process as follows:

“Merit retention is a system of selecting Justices established by the voters when they amended the Florida Constitution in the 1970s. Under merit retention, the Governor appoints new Justices from a list of three to six names submitted by a Judicial Nominating Commission. The Governor must select from the list. Once appointed, Justices eventually must face the voters in a “yes” or “no” vote as to whether they should remain on the bench.

“New Justices face their first merit retention vote in the next general

election that occurs more than one year after their appointment. If not retained in office, the Justice will be replaced in the same manner appointed. Justices’ merit retention races are conducted on a statewide basis.

“If retained, the Justice serves a six-year term beginning in early January following the merit retention election. The Justices then will again face an up or down vote in the general election occurring just before the six-year term expires. If not retained in office, the Justice will be replaced through the Judicial Nominating Commission system.”

In recent years, private advocacy groups have executed campaigns in various states against the retention of certain individual justices, particularly when justices issued opinions that stood at odds with the policy objectives of those advocacy groups.

For instance, in 2010, private advocacy groups – with heavy support from out-of-state persons – successfully campaigned against the merit retention of three justices of the Iowa Supreme Court, after the court unanimously decided a case involving gay marriage. According to the Des Moines Register, the election “marked the first time an Iowa Supreme Court justice

ha[d] not been retained since 1962, when the merit selection and retention system for judges was adopted.”

Similar efforts have materialized in Florida in anticipation of the upcoming November elections. The Florida Bar – under the leadership of President Scott Hawkins, President-Elect Gwynne Young, and President-Elect-Designate Eugene Pettis – is developing a voter education project to assist the public in understanding merit retention, its history and its purposes. President Hawkins discussed the issue in the March 2012 issue of the Florida Bar Journal.

The Bar has published information relating to merit retention on its website. This information includes the Bar’s legislative positions on the subject, summaries of relevant bills proposed during the 2012 Legislative Session, and talking points. The information may be accessed on the Bar’s website, which has devoted several pages to the 2012 Session.

All are encouraged to learn more about the merit retention system and educate those who may be unfamiliar with this important component of our judicial system. Further information about the Bar’s voter education project will be forthcoming.

Nominations Sought for Certification Awards

The Florida Bar Board of Legal Specialization and Education is accepting nominations for two awards that recognize board certified lawyers, judges or law firms who demonstrate the certification program’s professionalism and excellence principles. Applications are available at FloridaBar.org/certification and are due May 25, 2012. Contact Lindsey Blomberg at (850) 561-5850 or [\[berg@flabar.org\]\(mailto:berg@flabar.org\) for more information.](mailto:lblom-</p></div><div data-bbox=)

The Justice Harry Lee Anstead Award for Florida Bar Board Certified Lawyer of the Year is presented annually to a Florida board certified lawyer or judge. The award recognizes exemplary professionalism, excellence, character and commitment to The Florida Bar’s certification program and to the practice

of law.

The Award for Excellence in the Promotion of Board Certification recognizes creativity by a Florida Bar board certified lawyer or a law firm in advancing the public’s knowledge of and appreciation for legal board certification.

Both awards will be presented in June at the 2012 Annual Florida Bar Convention.

Stephanie A. Daniel: 2011 Claude Pepper Outstanding Government Lawyer

By Francine M. Ffolkes, Administrative Law Counsel, Florida Department of Environmental Protection

The 2011 selection committee for The Florida Bar Claude Pepper Outstanding Government Lawyer Award selected Stephanie A. Daniel, Special Counsel in the General Civil Litigation Section of the Office of the Attorney General, as the recipient of the year's award. The Florida Bar's President Mayanne Downs concurred in the judgment of the nomination committee that Ms. Daniel represents the very best of Florida's government lawyers, and exemplifies the highest ideals of government service.

Ms. Daniel demonstrated for thirty years as a government lawyer, a strong commitment to public service and the public interest that is unrivaled. A Martindale-Hubbell "AV" rated lawyer, Ms. Daniel represents the State of Florida, state agencies and state employees and officers in

a variety of complex civil actions, including federal civil rights class actions, which are among the most difficult and sophisticated trial practices of the Attorney General's Office. Previously as Chief Medical Attorney for the Florida Boards of Medicine and Osteopathic Medical Examiners, she was successful in prosecuting many physicians who posed a danger to the public health and welfare.

Outside the office Ms. Daniel's commitment to pro bono legal services and law student mentoring has not wavered since her earliest days as a member of The Florida Bar. She is also very active in her community and church serving as a Sunday school teacher, Vacation Bible School teacher and pre-teen and teen girls' mentor. Ms. Daniel holds a unique distinction as a founding member of The Florida

Bar Government Lawyer Section. She served as a chair and officer of various bar committees for many years, Chair of the Government Lawyer Section from 2001 to 2002, and became Board Certified in State and Federal Government and Administrative Practice in 2007. In addition, from 1997 through 2004, Ms Daniel was a Board Member, Vice President and President of the Florida Government Bar Association.

At a reception held during The Florida Bar's Annual Convention President Mayanne Downs presented Ms. Daniel with this prestigious award. Former Attorney General and founding member of the Government Lawyer Section, Bob Butterworth, spoke of the continuing commitment and hard work of those government lawyers who dedicate their careers to serving the public interest.



2011 Claude Pepper Outstanding Government Lawyer Award Winner, Stephanie Daniels, center, hold the award presented to her at the 2011 Annual Florida Bar Convention.

Posing with her are (L-R): Scott Hawkins, President of The Florida Bar, 2011-2012; Mayanne Downs, President, 2010 - 2011; Gwynne Young, President, 2012 - 2013; and Mary Ellen Clark, Chair, Government Lawyer Section, 2010-2011.

Congratulations to Stephanie Daniel, 2011's Claude Pepper Award Recipient!



Join us at this year's award ceremony, Friday, June 22, at the Gaylord Palms in Orlando, Florida, at 4:00 pm. Find out who will join the prestigious previous award recipients:

- 1990** – Navy Lt. Commander, Charles Coles Jeffries, Jr.
- 1991** – Chriss Walker, Senior Attorney, Department of Health and Rehabilitative Services Office of Child Support, Tallahassee
- 1992** – John J. Copelan, Jr., Broward County Attorney, Ft. Lauderdale
- 1993** – Enoch “Jon” Whitney, General Counsel for the Department of Highway Safety and Motor Vehicles, Tallahassee
- 1994** – Irene M. Quincey, South Florida Water Management District, West Palm Beach
- 1995** – Joseph Lewis, Jr., Assistant Attorney General, Department of Legal Affairs, Tallahassee
- 1996** – Anthony C. Musto, Office of the Broward County Attorney, Ft. Lauderdale
- 1997** – George B. Barrs, Office of the Public Defender, West Palm Beach
- 1998** – Jorge L. Fernandez, Office of the County Attorney, Sarasota
- 1999** – James A. Peters, Assistant Attorney General, Department of Legal Affairs, Tallahassee
- 2000** – George Lee Waas, Assistant Attorney General, Department of Legal Affairs, Tallahassee
- 2001** – Deborah K. Kearney, General Counsel, Department of State, Tallahassee
- 2002** – Denise M. Nieman, Office of the County Attorney, Palm Beach
- 2003** – William B. Hammill, a Civilian Attorney-Advisor with the United States Central Command Stationed at MacDill Air Force Base, St. Petersburg
- 2004** – Sheryl Wood, General Counsel for the South Florida Water Management District, West Palm Beach
- 2005** – Jack Shreve, Senior General Counsel for Consumer Affairs in the Office of the Attorney General, Tallahassee
- 2006** – W. Anthony Loe, Broward County State Attorney's Office, Homicide Prosecutor, Fort. Lauderdale
- 2007** – Judson M. Chapman, General Counsel for Dept. of Highway Safety and Motor Vehicles, Tallahassee
- 2008** – Patricia R. Gleason, Cabinet Affairs and Special Counsel for Open Government, Governor's Office, Tallahassee
- 2009** – Gerald B. Curington, Deputy General Counsel, Governor's Office, Tallahassee
- 2010** - John S. Slye, Deputy General Counsel with the Department of Children and Families, Tallahassee; and
- 2011** - Stephanie A. Daniel, Special Counsel, Office of the Attorney General, Tallahassee.

The Government Lawyer Section's "Pirates of the Chili-Bean" Take Home the Gold!



Pictured left to right: Robert "Bobby" Downie, Jr., Diane Guillemette, Lynne A. Quimby-Pennock, Diana Bock, Warren Pearson, Ellie Simon, Virindia Doss.



Above:
Diana Bock,
Lynne A. Quimby-
Pennock, Robert "Bobby"
Downie, Diane Guillemette,
Ellie Simon, Mary Ellen Clark.

A-r-r-g-g!

Representing the Government Lawyer Section, these happy chili cooks, the "Pirates of the Chili-Bean," sailed away with the award for Best Bedecked at the Tallahassee Bar Association's 16th Annual Chili Cook-Off on January 25, 2012

Case Summaries

Compiled by Betsy Stupski

Eleventh Circuit Court of Appeals

Estate of McCall v. United States, 09-16375, 5/27/11

The Eleventh Circuit determined that the Florida statutory cap on noneconomic medical malpractice damages did not violate the United States Constitution but certified several questions to the Florida Supreme Court to determine whether the cap violated the Florida Constitution.

A woman had severe complications after a difficult pregnancy and birth. She ultimately suffered cardiac arrest and later was removed from life support. Her representatives sued for medical malpractice. The district court determined that the case was subject to Florida's statutory cap on noneconomic medical malpractice damages.

The plaintiffs appealed, arguing that the cap on noneconomic damages violated both the Florida and United States Constitutions. The Eleventh Circuit determined that the statutory cap did not violate the Equal Protection clause of the United States Constitution because the Florida legislature had identified a legitimate governmental purpose. The Eleventh Circuit also concluded that the statutory cap did not violate the Takings Clause of the United States Constitution. However, the Court went on to certify several questions to the Florida Supreme Court for a determination whether the statutory cap violated the Florida Constitution. The following questions were certified:

- (1) Does the statutory cap on noneconomic damages, Fla. Stat. § 766.118, violate the right to equal protection under Article I, Section 2 of the Florida Constitution?
- (2) Does the statutory cap on non-

economic damages, Fla. Stat. § 766.118, violate the right of access to the courts under Article I, Section 21 of the Florida Constitution?

- (3) Does the statutory cap on noneconomic damages, Fla. Stat. § 766.118, violate the right to trial by jury under Article I, Section 22 of the Florida Constitution?
- (4) Does the statutory cap on noneconomic damages, Fla. Stat. § 766.118, violate the separation of powers guaranteed by Article II, Section 3 and Article V, Section 1 of the Florida Constitution?

State of Florida v. Department of Health and Human Services, 11-11021 & 11-11067, 12/18/11

The Eleventh Circuit declared the mandate to purchase health insurance unconstitutional.

The Eleventh Circuit determined that the federal government exceeded its Commerce Clause authority by requiring individuals to purchase health insurance. The Court said, "Further, the individual mandate exceeds Congress's enumerated commerce power and is unconstitutional. This economic mandate represents a wholly novel and potentially unbounded assertion of congressional authority: the ability to compel Americans to purchase an expensive health insurance product they have elected not to buy, and to make them re-purchase that insurance product every month for their entire lives."

Florida Supreme Court

Lewis v. Leon County, SC09-1698, 9/22/11

Section 19 of Chapter 2007-62, Laws of Florida was held unconstitutional because it impermissibly shifted constitutionally de-

financed costs from the state to the counties.

The Legislature enacted chapter 2007-62 which created the Offices of Criminal Conflict and Civil Regional Counsel (RCC), a system of court appointed counsel to represent indigent defendants, primarily in those cases where the public defender has a conflict of interest. Part of the act (section 19) required counties to pay to house the RCC. The First District held that that section 19 of chapter 2007-62, Laws of Florida was unconstitutional because it impermissibly shifted constitutionally defined costs from the state to the counties.

Finding that the state constitution clearly laid out the responsibility of the state to pay certain costs, the Florida Supreme Court affirmed saying, "In the instant case, the First District Court and the Leon County Circuit Court concluded that the plain language of article V, section 14 provides that the state is responsible for funding the RCC, including the overhead costs outlined in subsection (c)... We agree."

Donovan v. Okaloosa County, SC10-794, 1/5/12

Circuit court was correct when it validated bonds for beach restoration project.

The circuit court validated bonds issued for a beach restoration project in Okaloosa County. Property owners challenged the validation, making a number of arguments including that the bond validation was premature because DEP had not issued the permits for the project, the bonds did not serve a paramount public purpose, and the special assessment was invalid.

The Supreme Court rejected each of the arguments and affirmed the circuit court. First the Court said,

continued, next page

“The County readily met the requirements to demonstrate that regulations would be met. The County’s coastal engineer testified regarding the design of the project and progress of the County through DEP’s coastal permitting process, noting that the agency review process was nearly completed and permit issuance was anticipated. As for the second prong—the risk of irreparable harm from work in advance of permitting—no demonstration was necessary because no work could commence in advance of permit issuance... Moreover, appellants did not present strong and convincing proof that the County would not meet the requirements for a permit. In addressing appellants’ other arguments, the Court said, “Beach and shore preservation projects confront a critical threat to the welfare of the people of this state. Those special benefits that flow incidentally to certain properties because of the nature of the project do not diminish its predominantly public character. Nor does the predominantly public purpose of the project negate the special benefits received by the properties subject to special assessment...” and “Accordingly, we conclude that competent, substantial evidence supports the trial court’s determination that the County’s methodology is fair and reasonable.”

West Florida Regional Medical Center, Inc v. See, SC09-1997, 1/12/12

Blank application for hospital privileges was discoverable.

See sued West Florida Regional Medical Center and her doctors when she suffered permanent and severe liver damage after surgery. During discovery she requested a copy of the blank application for hospital privileges as well as other documents related to her physicians’ performance. Her request was primarily based on Amendment 7 which entitles patients to discover adverse incidents related to their treatment. The hospital objected making several arguments. They argued that the blank form was beyond Amendment 7. They also ar-

gued that Amendment 7 was unconstitutional. They also argued that it was preempted by federal law.

The First District ruled that See was entitled to the blank application as well as other documents pursuant to Amendment 7.

The Florida Supreme Court affirmed the First District saying, “We approve the First District’s decision below in See because the First District held that the trial court correctly ordered the disclosure of a blank application for medical staff privileges. Section 381.0287(b)1 impermissibly attempts to limit the disclosure requirements of Amendment 7, and the HCQIA does not preempt Amendment 7. In accordance with our decision, we disapprove the decision of the Fourth District in Taitel and its contrary holding that a blank form used by a hospital for nurse credentialing is confidential and protected from disclosure.”

First District Court of Appeal

Atwater v. City of Weston, 1D10-5094, 5/2/11

The President of the Senate, the Speaker of the House, and the Governor were not proper defendants to a constitutional challenge because they were not the public official responsible for enforcing the law.

Cities and counties brought an action to have a growth management law declared unconstitutional. The defendants, including Governor Crist, the President of the Senate and the Speaker of the House, moved to dismiss, arguing that they were not the proper parties. The trial court denied the motion to dismiss and found the law to be unconstitutional.

The First District reversed the trial court. The Court found that the Department of Community Affairs was the only proper defendant because it was the agency responsible for enforcing the growth management laws. The Court said, “But the declaratory action at issue here does not involve a broad constitutional duty of the State

implicating specific responsibilities of the defendants. Nor does the lawsuit involve any issue in which the defendants have an actual, cognizable interest. Rather, the lawsuit simply challenges the constitutionality of a piece of legislation governing growth management. As such, the Senate President, the Speaker of the House of Representatives and the Governor clearly are not proper parties to the action.

Mendelsohn v. Florida Department of Health, 1D11-3278, 8/31/11

The Court relied on comma placement and legislative history to interpret statute.

Dr. Mendelsohn was convicted in federal court of a felony. After his conviction the Florida Department of Health, without a hearing, issued an emergency suspension order that suspended his license pursuant to section 456.074(1), Florida Statutes. Dr. Mendelsohn objected, arguing that although he has a felony conviction, section 456.074(1), Florida Statutes authorized an emergency suspension only when the federal conviction related to the Medicaid program.

The First District struck down the suspension order. In doing so, the Court looked at comma placement to determine that the phrase “relating to the Medicaid program” modified each of the statutes listed in section 456.074(1) and not just the last section listed. The Court said, “Based on the rules of grammatical construction, , a qualifying phrase will be read as modifying all items listed in a series unless there is no comma between the last of the series and the qualifying phrase.” In further analysis, the Court said “...while there has been no Florida case addressing whether “relating to the Medicaid program” in section 456.074(1)(b) modifies all of the enumerated offenses, or only the last offense, this particular subsection was added to Senate Bill 1986, which was originally entitled ‘A bill to be entitled An act relating to Medicaid.’... Further, the Legislative Bill Analysis evi-

dences the Bill was enacted with the purpose of curtailing the growth of Medicaid fraud in Florida... As such, it was clearly the Legislature's intent in enacting section 456.074(1)(b) to authorize the issuance of an ESO only for those enumerated offenses which 'relate' to Medicaid. The Court concluded by saying, "Giving weight to the statute's plain meaning and the legislative intent, the underlying facts do not qualify as one of those instances where DOH may issue an ESO without providing specific reasons why the suspension is necessary to prevent immediate harm to the public. As such, we grant the petition and order the ESO be stricken."

Florida Department of Highway Safety and Motor Vehicles v. National Safety Commission, 1D10-6448, 10/6/11

Vendor who contracted with a state agency was not allowed to unilaterally renew the contract.

The trial court in this case ruled that the National Safety Commission (NSC) could unilaterally renew a five-year contract with the Department of Highway Safety and Motor Vehicles (DHSMV). The Department issued an Invitation to Negotiate (ITN) soliciting proposals to publish a driver's handbook. Eventually the parties signed a contract incorporating the ITN and the NSC's best and final offer. After five years the NSC tried to exercise the renewal option contained in the best and final offer. The DHSMV refused so the NSC sued for specific performance. After the trial court found in favor of the NSC, DHSMV appealed.

The First District reversed saying, "We interpret the contract *de novo* and conclude that the BAFO provision addressing the renewal option did not change, and thus supersede, the relevant ITN provision, nor does the language give NSC the unilateral right to renew the contract."

Graham v. Haridopolis, 1D11-384, 10/12/11

Challenged statutes limiting the

manner in which universities could use tuition funds did not violate the Florida Constitution.

A group of citizens challenged several statutes that placed limitations on the manner in which universities use tuition and fees collected from students. The Plaintiffs argued that the statutes were unconstitutional because they were in conflict with the constitutional provisions (Article IX section 7) which gave the Board of Governors authority to establish and expend tuition and fees. The trial court granted a motion for summary judgment in favor of the Legislature.

The First District affirmed the trial court saying, "The legislative power to raise funds is not limited to the imposition of taxes; it includes the power to impose fees necessary to offset the costs of using state government services. Likewise, the power of appropriation is not limited to certain types of funds; it extends to all funds in the State Treasury from whatever source." The Court went on to say, "In light of these principles, the validity of the challenged statutes boils down to whether Amendment 11 [Article IX section 7] divested the Legislature of its 'power of the purse' over state university tuition and fees by vesting that authority in the Board. Like the trial court, we see nothing in the language of Amendment 11 or its history that would suggest that such a fundamental change in the Legislature's power was intended or effectuated. . . Article IX, section 7(d) provides that the Board is 'fully responsible for the management of the whole university system.' But this provision also makes clear that the Board's management of the university system is "subject to the powers of the legislature to appropriate for the expenditure of funds."

Johnson v. Jarvis, State Attorney for the Third Judicial Circuit of Florida, 1D11-1710, 11/16/11

Trial court must decide whether the agency carried out its public records policy without unreasonable delays.

An arrestee in Columbia County went to the State Attorney's Office, requesting to see witness statements and video of the event leading to his arrest. The assistant state attorney (ASA) told him that since there was no information filed, he would need to make a public records request to obtain the material which the arrestee did as soon as he was told. The ASA then told him he would need to make the request in writing and then go to a neighboring county pursuant to the State Attorney's policy to see the file. Eventually the arrestee filed an action for public records violations, arguing that the ASA had been unreasonable in not providing the files that were within his reach. The State Attorney's Office filed a motion to dismiss. The Court granted the motion to dismiss on the basis that there had been no refusal to provide the records.

The First District reversed the dismissal and remanded with instructions. The Court said, "

On remand, the trial court must determine whether there was a delay to produce the requested records and, if so, whether the delay was reasonable under the facts of this case. The reasonableness of the appellee's policy itself is not the subject of the inquiry. Rather, the inquiry centers on whether the application of the policy resulted in an unjustified delay that amounted to an unlawful refusal to comply with chapter 119."

Rush v. High Springs Florida, 1D11-3714, 2/23/12

The Florida statute which exempts pre-employment tests from disclosure as a public record includes pre-employment polygraph tests.

The City of High Springs redacted questions and answers from a pre-employment polygraph test before releasing it to a citizen who had made a public records request. The City made the redaction pursuant to section 119.071(1) (a), Florida Statutes which exempts, from public records disclosure, examination questions

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and answers prepared and received by a government agency. Rush, the requestor, argued that the statute only intended to exempt questions and answers from technical examinations and examinations that test skills. The trial court rejected Rush's argument and determined that the City had acted properly.

The First District looked at the plain language of the section 119.071(1)(a), Florida Statutes and affirmed the trial court.

Second District Court of Appeal

City of Venice v. Gwynn, 2D10-5696, 12/30/12

City ordinance that restricted short term rentals did not result in an unconstitutional taking.

The City of Venice passed an ordinance that restricted short term rental (less than three weeks) of residential homes to three times a year. A property owner challenged the ordinance as unconstitutional as applied. She argued that the ordinance operated as an unconstitutional taking. The circuit court found for the property owner.

On review, the Second District determined that the circuit court had departed from the essential requirements of the law. The Court laid out

the test for determining whether a regulation unconstitutionally interferes with a property owner's rights, a court must consider 1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the government invasion. The Court determined that Gwynn's property had continued value as a monthly rental, as a short term rental for three periods, or as an investment property that could be sold and; therefore, there had been no unconstitutional taking.

Miccosukee Tribe of Indians of Florida v. Department of Environmental Protection, 2D11-27, 12/30/11

State could proceed with eminent domain action against land recently purchased by the Miccosukee Tribe.

The Miccosukee Tribe of Indians of Florida petitioned for a writ of certiorari to quash the trial court's order that denied its motion for final summary judgment in an eminent domain proceeding based on the Tribe's alleged sovereign immunity and/or the provisions of the Federal Nonintercourse Act, 25 U.S.C. § 177.

The Second District Court of Ap-

peal held that the eminent domain action here is not an action against the Tribe itself, but instead is an action against land held in fee by the Tribe. The Department of Environmental Protection does not need personal jurisdiction over the Tribe—it needs only in rem jurisdiction over the land. The Tribe is not entitled to issuance of the writ because neither sovereign immunity nor the Nonintercourse Act prohibit the Department's in rem condemnation action against land acquired by the Tribe on the open market and held by the Tribe in fee simple.

Pinellas County v. Baldwin, 2D11-2774, 1/20/2012

The sword-wielder exception to the home rule privilege applied in a suit for inverse condemnation.

Baldwin, a Hillsborough County resident, owned property that was adjacent to land owned by Pinellas County. When Pinellas County took actions that caused her land to flood, she sued Pinellas in Hillsborough County for inverse condemnation. Pinellas County moved to dismiss for improper venue. They argued that according to the home venue privilege, Baldwin would be required to sue them in Pinellas County. Baldwin

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argued that the sword-wielder exception applied and Hillsborough County was the appropriate venue. The trial court found in favor of Baldwin.

The Second District affirmed the trial court decision.

Third District Court of Appeal

City of Miami v. Hervis, 3D11-442, 7/5/11

City that made a decision not to promote an officer with Parkinson's disease was not held liable for discrimination because officer failed to rebut evidence of non-discriminatory reasons for decision.

Human Rights Commission may not improperly shift the burden to prove lack of pretext.

A police officer who had Parkinson's disease sued the City when he failed to get a promotion while other officers with similar credentials did get a promotion. Although the Chief of Police articulated non-discriminatory reason for not giving the officer a promotion, the Miami-Dade Commission on Human rights made a finding of discrimination. The finding was affirmed by the circuit court.

The City appealed on the basis of failure to provide due process. A Miami ordinance required the Commission to provide a complete transcript of the discrimination hearing. Because they were unable to do so and also did not provide a new evidentiary hearing, the Court found that the City was denied due process. The Court went on to find that the officer failed to rebut the evidence proffered by the Chief of Police the legitimate non-discriminatory reasons for failing to promote the officer. The Court also found that the Commission improperly shifted the burden to the City to prove a lack of pretext.

Miami-Dade County v. Rodriguez, 3D10-856, 8/31/11

The court's discretionary certiorari review is inappropriate for petitions by public agencies whose motion to dismiss was based on

sovereign immunity.

A police officer shot Rodriguez, a store owner, by mistake. Rodriguez brought an action against the County for negligence. The County moved to dismiss based on sovereign immunity. After the trial court denied the motion, the County filed a petition for certiorari.

The Third District first distinguished between claims of the absence of liability (no duty) and claims of sovereign immunity. The Court determined that certiorari was not available when the trial court denied a motion to dismiss based on the absence of liability (based on a lack of duty of care) but then determined that certiorari should be available when the denied motion to dismiss was based on sovereign immunity. The Court said, "We will, therefore, like our sister courts, no longer exercise our certiorari jurisdiction to review orders either denying motions to dismiss or denying motions for summary judgment where the sovereign argues that it is not liable as alleged because no duty can be demonstrated... We cannot, however, join our sister courts in refusing, on jurisdictional grounds, to entertain all writs from denials of motions to dismiss or for summary judgment on sovereign immunity grounds." The Court then certified the conflict with sister courts to the Florida Supreme Court.

Brodeur v. Miami-Dade County, 3D11-503, 1/4/2012

Under special circumstances zoning board member could challenge the board's vote on an application.

A developer applied for approval to the Miami-Dade County Community Zoning and Appeals Board (CZAB) to increase an apartment building from four stories to eight stories. Six members were present to vote and the vote resulted in a tie. The county attorney then advised that the tie vote would cause the matter to carry over to the next meeting of the CZAB. After the county attorney's advisement, one of

the board members, Brodeur, who had voted against the application, left the meeting because she was ill. After she left, the discussion continued and the assistant county attorney permitted another vote and this time the approval votes won. Brodeur objected to the second vote. She filed a complaint in circuit court but it was dismissed for lack of jurisdiction.

On appeal the Third District reversed and remanded. The Court acknowledged that the general rule is that a public official lacks standing to challenge the rules and procedures applicable to his or her official acts. However, the Court also pointed out that there is an exception when the public official is willing to perform his or her duties but is prevented from doing so by the actions of others. The Court found that Brodeur had sufficient standing to challenge the vote. The Court said, "Ms. Brodeur's complaint does not address the substantive reasons for her vote, the merits of the developer's application, or the authority of the CZAB to act upon that application to the point of her vote. Rather, her claim is simply that her vote was improperly nullified, ... —a distinct "injury in fact" resulting from the CZAB's actions taken in her absence."

Miami-Dade County v. Asad, 3D07-363, 1/25/12

The trial court erred when it allowed evidence regarding events occurring subsequent to the arrest in a false arrest trial.

Several bondsmen allegedly beat an individual while executing an arrest warrant against his friend. Some police officers arrested the bondsmen but the charges were ultimately dropped. The bondsmen later sued the County and police officers for malicious prosecution and false arrest. The bondsmen never presented any evidence of malice so the defendants moved for a directed verdict but were denied. Ultimately the jury found for the Plaintiffs for false arrest. The Defendants appealed because the

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trial court allowed evidence that the charges were later dropped which is inappropriate and irrelevant to a false arrest claim.

In reversing the trial court, the Third District said, "The Plaintiffs' decision to present the malicious prosecution claims to the jury, despite the fact they had absolutely no evidence to support these claims, denied the Defendants their right to a fair trial. By proceeding with their malicious prosecution claims, the Plaintiffs were able to introduce otherwise inadmissible evidence and make otherwise improper arguments to the jury, and the jury was permitted to consider and allocate damages based on evidence inadmissible as to the false arrest claims..."

The Plaintiffs were permitted to introduce, over defense objection, that the Assistant State Attorney subsequently dismissed the charges against the Plaintiffs. While this evidence is relevant in a malicious prosecution action, because one of the elements the Plaintiffs must prove in a malicious prosecution claim is that the charge was terminated in the Plaintiffs' favor, it was not relevant in a false arrest action, which turns on whether the officer possessed probable cause to make the arrest, not on what occurred after the arrest. "Probable cause is evaluated from the viewpoint of a prudent cautious police officer on the scene at the time of the arrest."

City of Key West v. Florida Keys Community College, 3D11-417, 1/18/2012

The Florida Legislature does not have to expressly exempt state-owned property from a statute authorizing local fees in order for state-owned property to be protected by sovereign immunity.

The City of Key West created a storm water utility system pursuant to Florida's storm water statute. The fees applied to all developed property within the city limits including the property where the Florida Keys

Community College was located. However, the college did not use the City's system because they operated their own storm water system. The College filed suit, saying that they had sovereign immunity with respect to the City's storm water fees. The trial court agreed that the college enjoyed sovereign immunity from the storm water fees and ordered the City to refund the fees already paid.

The City appealed, arguing that the college was not protected by sovereign immunity because the state statute authorizing cities to create storm water systems did not exempt state-owned property. The Third District rejected the City's argument. The Court explained, "However, the City confuses waiver of sovereign immunity with exemption. Under Florida law, sovereign immunity is fundamentally different from the protection provided by an exemption. Whereas 'sovereign immunity is the rule, rather than the exception,'... the converse is true of an exemption. Importantly, while an exemption must be expressly granted, the State enjoys sovereign immunity unless immunity is expressly waived. Thus, the Legislature's inaction does not constitute a waiver of sovereign immunity."

Fourth District Court of Appeal

Florida Department of Revenue v. Seminole Tribe of Florida, 4D10-456, 6/22/11

The Seminole Tribe is required to pay taxes on fuel bought outside of the reservation.

The Seminole Tribe sued the Department of Revenue for sales and excise taxes for fuel purchased off the reservation and tribal lands but used for the performance of tribal functions. The Department filed an answer with a number of affirmative defenses. The trial court eventually granted the Seminole motion for summary judgment.

The Fourth District reversed the

trial court saying, "Off-reservation transactions, even by tribal members, are susceptible of taxation without running afoul of the Indian Commerce Clause... We find the off-reservation purchase is taxable notwithstanding that the legal incidence of the tax falls on a tribal purchaser. As DOR argues, it would be impossible to track the use of the fuel on and off the tribal lands. The Tribe reaps the benefit of untaxed fuel when it is purchased on tribal lands even if the fuel is used off of tribal lands. Common sense suggests that the tax should correspondingly be imposed if the fuel is purchased off the reservation regardless of where it is consumed."

Milanese v. City of Boca Raton, 4D09-5247, 2/22/12

Police officer did not create a foreseeable zone of risk when he released arrestee.

Milanese was driving erratically when he was pulled over and taken into custody. Almost an hour after being taken into custody, an officer called a cab and released Milanese. The cab driver waited a few minutes at the police station but left when no one showed up to ride. In the meantime Milanese left the police station and lay down beside some train tracks. Later he was struck by a train and killed. His representatives sued the City, claiming that the police officer owed Milanese a duty. The City moved to dismiss arguing that Milanese was not in custody when the train killed him and did not create a foreseeable zone of risk. The circuit court granted the motion to dismiss.

The Fourth District affirmed the circuit court. The Court said, "...we conclude that a duty of care did not exist upon Milanese's release because the police: (1) did not create or permit dangers to Milanese to exist; (2) were no longer holding Milanese in custody; (3) were no longer detaining Milanese; and (4) did not otherwise subject Milanese to danger."



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Conference Room

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10:20 a.m. – 11:10 a.m.

Discussion with the Court

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11:10 a.m. – 12:00 p.m.

Panel on Oral Argument and Ethics

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Matthew J. Conigliaro, St. Petersburg

Bruce S. Rogow, Fort Lauderdale

12:00 p.m. – 1:15 p.m.

Lunch (included in registration)

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1:15 p.m. – 2:05 p.m.

Panel Discussion on Briefs in Support and in Opposition to Requests for Discretionary Review; Ethics

Moderator: Bruce S. Rogow, Fort Lauderdale

Steven L. Brannock, Tampa

Susan Kelsey, Tallahassee

2:05 p.m. – 2:20 p.m.

Break

2:20 p.m. – 3:10 p.m.

Discussion of Professionalism and Ethical Responsibilities

Justice R. Fred Lewis, Tallahassee

3:10 p.m. – 4:00 p.m.

Panel on Merit Briefs and Ethics

Moderator: Paul Morris, Miami

Christine Davis Graves, Tallahassee

Courtney Brewer, Tallahassee

4:00 p.m. – 4:50 p.m.

Panel on Amicus Briefs and Ethics

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8:30 a.m. – 8:35 a.m.

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Warren J. Pearson, Tallahassee

8:35 a.m. – 9:30 a.m.

Federal APA Adjudication (Formal and Informal)

TBD

9:30 a.m. – 10:20 a.m.

Federal APA Rulemaking

Winston K. Borkowski, Hopping Green & Sams, P.A.

10:20 a.m. – 10:30 a.m. **Break**

10:30 a.m. – 12:00 p.m.

**Federal APA: Judicial Review of Agency Action
(Scope and Availability of Judicial Review)**

Daniel H. Thompson, Berger Singerman, LLP

12:00 p.m. – 1:30 p.m. **Lunch (on your own)**

1:30 p.m. – 2:20 p.m.

11th Amendment Immunity

Barbara C. Wingo, University of Florida

2:20 p.m. – 3:10 p.m.

Civil Rights Action under 42 U.S.C. Section 1983

Stephanie A. Daniel, Office of the Attorney General

3:10 p.m. – 3:20 p.m. **Break**

3:20 p.m. – 5:00 p.m.

FOIA, FACA, and Federal Government in the Sunshine

Kenneth B. Hayman, Department of Environmental Protection

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AUDIO CD ORDER FORM

This seminar is for lawyers and non-lawyers alike. It is designed to assist anyone who wants to learn about the legislative process and access legislative information, including private practitioners, agency personnel, agency and department heads, lobbyists, business persons and their staffs. This course will provide information useful to anyone who participates in their organization's legislative grass roots efforts as well as provide an excellent overview of the legislative process.

8:25 a.m. – 8:30 a.m.

Introduction and Welcoming Remarks

8:30 a.m. – 9:20 a.m.

The Legislative Process

Find out how bills are filed, move through the legislative process, are passed, amended, defeated, become law, and are vetoed.

Patrick L. "Booter" Imhof, Staff Director, Senate Regulated Industries Committee, Tallahassee, Florida

9:20 a.m. – 10:10 a.m.

Lobbying and Ethics

The Florida law governing registration, reporting, and regulation of lobbyists representing public and private interests, including practical tips on dealing with legislators and some of the ethical rules dealing with non-adjudicative proceedings.

Peter M. "Pete" Dunbar, Former Representative, Florida House of Representatives, Pennington, Moore, Wilkerson, Bell & Dunbar, Tallahassee

10:10 a.m. – 10:30 a.m. **Break**

10:30 a.m. – 11:00 a.m.

Overview of Senate Rules and Procedures

An overview of the rules and procedures governing the operation of the Senate.

John B. Phelps, Staff Director, Senate Rules Committee, Tallahassee

11:00 a.m. – 12:00 p.m.

Simulated Committee Meeting

The Committee members will present the committee process, including consideration of bills, taking of testimony and disposing of motions and amendments during a Legislative Committee Meeting.

Committee Members:

Patrick L. "Booter" Imhof, Chair

Tiffany A. Harrington

Jennifer L. Hrdlicka

Eric W. Maclure

Stephen M. "Pepper" Uchino

J. Lynn Koon, Committee Administrative Assistant

Joshua D. "Josh" Aubuchon –

Bill Sponsor

Miguel Oxamendi – *Bill Opponent*

12:00 p.m. – 1:30 p.m.

Lunch

1:30 p.m. – 1:35 p.m.

Reconvene and Welcoming Remarks

1:35 p.m. – 2:25 p.m.

Once a Bill Becomes a Law – Is There Such a Thing as Legislative History?

How to research legislative history including how and where to locate legislative intent., including tracking a law change from the statute back to bill form (including chapter laws, slip laws, bill analyses, floor and committee action).

Dan R. Stengle, Hopping, Green & Sams, Tallahassee

2:25 p.m. – 3:15 p.m.

Legislative Sunshine

Highlights of the constitutional and legislative rules provisions that relate to public records and open meetings, including a discussion of legislative documents and work product as public records under the constitution and rules.

George T. Levesque, General Counsel, Florida House of Representatives

3:15 p.m. – 3:30 p.m. **Break**

3:30 p.m. – 3:50 p.m.

Overview of House Rules and Procedures

An overview of the rules and procedures governing the operation of the House of Representatives.

Stephanie Birtman, Staff Director, Florida House of Representatives Rules & Calendar Committee, Tallahassee

3:50 p.m. – 4:50 p.m.

Simulated Floor Session

Registrants will sit in the member's chairs on the floor of the House with Legislative Staff and former Members of the Legislature and debate amendments, motions, and vote on legislation.

Participants:

Samuel P. "Sam" Bell, III – *Speaker*

Peter M. "Pete" Dunbar – *Majority Leader*

Stephanie Birtman – *Rules & Calendar Committee Chair*

Richard Herring – *Appropriations Committee Chair*

Randy Havlicak – *Member*

Jennifer Hrdlicka – *Member*

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Robert L. "Bob" Ward – *Reading Clerk*

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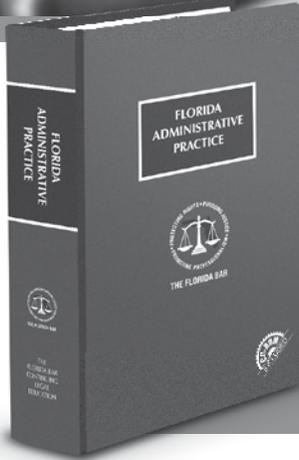
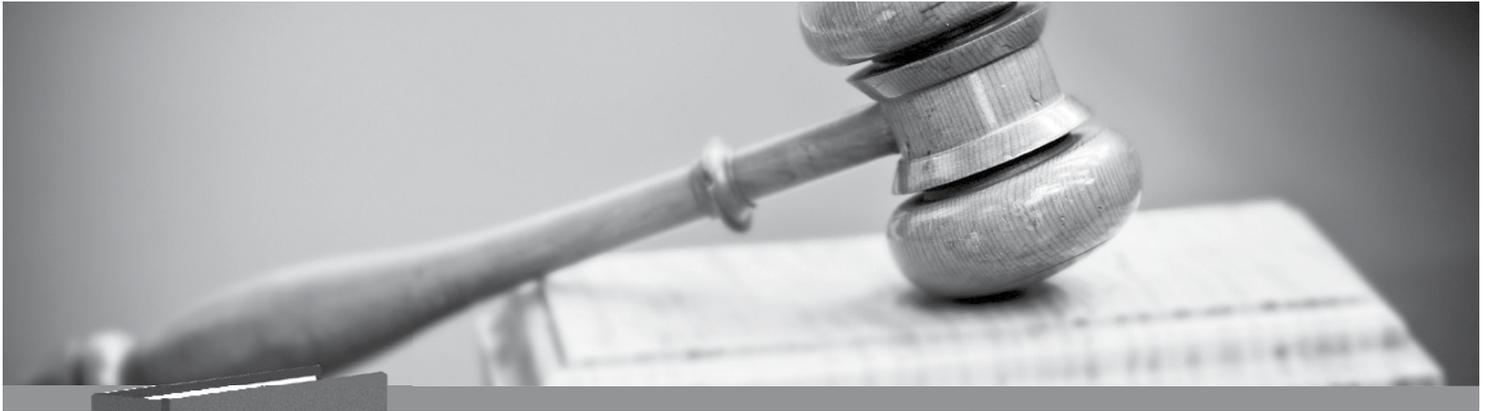
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