

# Annual Ethics Training Now Required for Municipal Officers

by Dana Lynne Crosby-Collier

Over the past couple of years, Florida’s Code of Ethics, found at Part III, Chapter 112, Florida Statutes, has been the rare subject of legislative amendments. A recent major addition to the Code of Ethics is the requirement that all constitutional officers complete four hours of ethics, public records, and Sunshine law training each year. At the time of the initial passage of this training requirement, the following individuals were included: the Governor, the Lieutenant

Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.

In 2014 the law was amended again to expand the training requirement. Effective January 1, 2015, all elected *municipal* officers must also complete

four hours of ethics, public records, and Sunshine law training on an annual basis. Also effective on January 1, 2015, is that each officer must certify that he/she completed the training at the time the officer files his/her annual financial disclosure form; this certification requirement will begin on January 1, 2015.

There are many opportunities for county and municipal officers to compete this training requirement. In

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# Chair’s Report

by Dana Lynne Crosby-Collier



Dear Section Members:

It has truly been an honor to serve as the Chair of the City, County, and Local Government Law Section this past year. It has been a really great year and on that has gone by too quickly!

On behalf of the executive council, I am pleased to announce that we have increased our grant funding to local government offices so that more

interns can be hired to assist local government offices this summer! The intern grant funding has been a very successful program that introduces young lawyers to local government law and enables in-house legal counsel to pay these interns. We see a trend in government offices hiring younger lawyers and it is an important role of the Section to facilitate this growth. To that end, the Section also participated in two mentoring picnics over the past year -- the 11<sup>th</sup> Annual Kozyak Minority Mentoring Picnic in Hialeah and

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**CHAIR'S REPORT**

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the Third Annual Greater Orlando Diversity Mentoring Picnic in Orlando. Participation in events such as these enable us to spread the word about local government opportunities to young lawyers and law students.

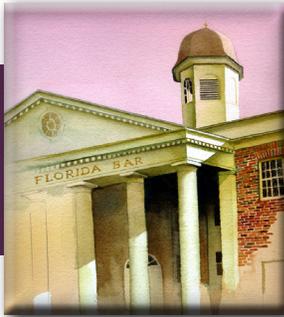
Seminar activity has remained strong and offered much subject matter diversity this year as well. The Section again sponsored the annual Sunshine Law and Public Records Seminar in February in Tallahassee. Conference chair, Rob Teitler, did another spectacular job assembling the speakers and putting on a very successful conference. Also, as we close out the year, special thanks go to Mike Grogan who, in 2014, stepped down after 30 years of co-chairing the Public Employment Labor Relations Forum seminar in partnership with the Labor and Employment Law Section. The seminar will continue as a joint effort under the capable leadership of Glenn Thomas for our Section. Once again the Section will sponsor the Public Finance seminar and the Certification

Review Course on May 7 of this year at the B Hotel at Disney; Sandy MacLennan and Herb Thiele again will chair these seminars and we are grateful for their continued service to the Section. The 38<sup>th</sup> Annual City, County and Local Government Law Seminar will be in Orlando this year (May 8 and 9) and conference chair, Mark Moriarty, has done a fabulous job in lining up interesting speakers on very timely topics. We hope you will join us in Orlando at the B Hotel at Disney for this annual event.

As I close out this year, it is important for me to thank the members of the executive council, committee members, and other Section members who have helped so much over the past year. Many hands do truly lighten the load and the Section could not do its job without the hard work, support, and dedication of its members. Special thanks to Hans Ottinot, Marion Radson, and Patrick McCormack for their work on behalf of the Florida Bar and the Section in facilitating resolution on issues relating to Florida Bar Rule 4-4.2. The task has been very involved, as we discuss and attempt to resolve the concerns of many different Sections,

and we hope to bring resolution and closure to the issues soon. Special thanks, too, to Nancy Stuparich for her service on the Bar's Diversity and Inclusion Committee and as a liaison to that Committee for the Section. Kudos to David Miller, who, in the last year, produced 4 outstanding articles for publication in the Bar *Journal*. We are so grateful for his procuring, editing, and handling of these very fine articles that represent our Section well. A round of applause goes to Craig Leen for resurrecting the Agenda and keeping us all up-to-date and informed with the information he provides in the Agenda and by his tireless service as a speaker at the seminars. Finally, a big thank you to our Section Administrator, Ricky Libbert, for all that she does for all of us. She is a wonderful Section Administrator and a credit to The Florida Bar.

As I close out my year as chair and prepare to pass the torch on to my esteemed colleagues, next year's Chair, Mark Moriarty, and next year's Chair-elect, Jeannine Williams, it is my hope that membership will continue to grow in number and in service to the Section.



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# Florida v. Georgia and the Management of Water Consumption

by Ingrid P. Benson-Villegas

Florida, a state where water is perceived to be as abundant as sunlight and that has even been considered to have had an overabundance of water in its past, is currently confronting a water dispute.<sup>1</sup> The United States Supreme Court decided to hear a dispute that has spanned decades between the states of Florida and Georgia involving the Apalachicola-Chattahoochee-Flint (“ACF”) River Basin.<sup>2</sup> This case and the discussions that arise from it that relate to the finiteness of water may be of interest to local government attorneys, so that the implementation of water laws in land-use zoning may be facilitated and wetland conservation is promoted.

Florida sued Georgia in the U.S. Supreme Court under its original jurisdiction.<sup>3</sup> Although Alabama is geographically connected to the ACF River Basin and Florida is not opposed to its participation in the action, it is not involved in the U.S. Supreme Court case because Florida asserts no wrongful act by Alabama.<sup>4</sup> The most recent development on the case occurred when the U.S. Supreme Court Georgia’s Answer in February 2015.<sup>5</sup>

While Georgia demands that water be diverted from Lake Lanier for municipal and industrial uses near Atlanta, Florida has the competing interest of providing water for the endangered or threatened species in Florida as well as maintaining the stock of fish and seafood available for harvest in the Apalachicola River and Bay.<sup>6</sup> The increasing population of the city of Atlanta strongly relies on the Chattahoochee, which feeds Lake Lanier.<sup>7</sup> Similarly, Florida relies on waters from the Chattahoochee to sustain the oyster beds in Apalachicola Bay, as ninety percent of Florida’s oysters come from the Apalachicola Bay.<sup>8</sup>

Florida is in a good position to prevail in its suit against Georgia. It will lose a valuable resource if Georgia is allowed to take as much water as it wishes out of the Chattahoochee and Flint Rivers.<sup>9</sup> Further,

Florida’s ability to prove harm from Georgia’s water withdrawal is likely to be eased by advances in the accuracy of modern scientific studies and scientific data may show a pattern of harm resulting from increased water withdrawal.<sup>10</sup>

Florida’s reliance on scientific data will become useful to support its argument that the reduced flow of the Apalachicola River near the Woodruff Dam is caused by Georgia’s water consumption and that Georgia’s water consumption has harmed the Apalachicola oyster fisheries.<sup>11</sup> This is an assertion that Georgia disputes and that Georgia contends should be settled by the U.S. Army Corps of Engineers.<sup>12</sup> Both Georgia and Florida likely will need to show that they are running conservation programs, that each state has plans for locating alternative sources of water, and that each state is using water in an efficient manner.<sup>13</sup>

Other eastern states have had water disputes. In 1931, the Court heard two cases, *New Jersey v. New York*<sup>14</sup> and *Connecticut v. Massachusetts*<sup>15</sup>, that each had similar fact patterns to the present case. In *New York*, New Jersey alleged that New York’s diversion of water would increase the salinity of the lower part of the Delaware River and of Delaware Bay to the injury of the oyster industry there.<sup>16</sup> New York contended that New York City needed an increase in its water supply, thereby justifying its proposal to divert a large amount of water from the affected tributaries of the Delaware River.<sup>17</sup> In *Connecticut*, Connecticut brought a suit to enjoin Massachusetts from diverting waters from the watershed of the Connecticut River that Massachusetts wanted to use for Boston and neighboring cities and towns.<sup>18</sup>

In *New Jersey v. New York* and *Connecticut v. Massachusetts*, the Court applied the doctrine of equitable apportionment rather than the common law rules of riparian rights.<sup>19</sup> Given the similarity of the facts among the cases, the Court likely will apply the doctrine of equitable apportionment

to *Florida v. Georgia*.<sup>20</sup>

Within municipalities in Florida, a salient method to manage the amount of water consumed is to enforce consumptive use permits.<sup>21</sup> Florida’s five water management districts allocate water through a permit system and this permit is known as a consumptive use permit.<sup>22</sup> The objectives of the system are to “(1) prevent waste, (2) provide certainty to existing users, (3) provide equal rights irrespective of economic power, (4) protect natural resources and (5) provide for future users by requiring water managers to address comprehensive planning and resource development.”<sup>23</sup>

The cumulative impact on water supply is also important. For instance, the court in *Peace River/Manasota Reg’l Water Supply Auth. v. IMC Phosphates Co.* acknowledged that the appellee’s mining activities would result in a reduced stream flow in Horse Creek and that the reduced stream flow by itself may not be an adverse impact.<sup>24</sup> It was also recognized, however, that if every project in the Horse Creek basin results in a reduced stream flow, then “the cumulative impact of those projects will, at some point, become adverse.”<sup>25</sup>

A significant provision in the Florida Water Resources Act found in *IMC Phosphates Co.*, section 373.414(8)(b), Florida Statutes (2015), allows the Department of Environmental Protection (“DEP”) to examine how projects impact bodies of water in isolation, rather than considering the cumulative impacts of multiple projects when making permitting decisions.<sup>26</sup> As long as the impact of each project is small enough that the impact cannot be considered to be adverse, “DEP never has to engage in a cumulative impacts analysis” even if the impacts in their entirety have a significant adverse impact.<sup>27</sup> Therefore, “despite the legislature’s apparent intent to force DEP to consider cumulative impacts of multiple projects when making permitting decisions, the actual legislation does not effectuate this intent.”<sup>28</sup>

*continued...*

## WATER CONSUMPTION

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Besides the implementation of many water conservation regulations within municipalities, the state of California is devising ways to become water independent because of its pervasive drought.<sup>29</sup> These water conservation methods may serve as a model for municipalities in the eastern United States. For instance, in the City of Palo Alto, new water use restrictions implemented in 2014 saved it approximately 16% through 2014.<sup>30</sup>

In Los Angeles County, drinking water cost per household ranges from as low as \$115 per year in the city of San Marino to as high as \$2,245 per year in the city of La Cañada Flintridge because of the scarcity of the resource.<sup>31</sup> A 50 million gallon per day desalination plant in Huntington Beach, that will become operational in 2018, is in its final stages of development.<sup>32</sup> The South Coast Water District is also developing an ocean desalination facility.<sup>33</sup> This facility is expected to “draw as much as 30 million gallons a day of ocean water for reverse osmosis treatment, yielding up to 15 million gallons of local potable water a day.”<sup>34</sup> The Orange County Water District is also increasing its use of recycled water.<sup>35</sup>

As water disputes become common, it is important to recognize that municipalities should plan ahead. Making, enforcing, and/or modifying laws to conserve water in municipalities, developing desalination plants, and recycling water will result in the conservation of water. Water should not have to become a divisive resource among states.

### Endnotes:

1 See generally Melanie Leitman, Comment, *Water Supply and Management for a Growing State*, 27 J. Land Use & Envtl. L. 153, 154, 162 (2011) (indicating the earlier problem of overabundance of water in Florida and the current problem of water resource allocation).  
2 See Bill Cotterell, *Water Wars between Florida, Georgia Advance at U.S. Supreme Court*, Reuters, Nov. 3, 2014, available at <http://www.reuters.com/article/2014/11/03/us-usa-florida-oysters-idUSKBN0IN28420141103>; Robert E. Vest, *Water Wars in the Southeast: Alabama, Florida, and Georgia Square Off Over the Apalachicola-Chattoohoochee-Flint River Basin*, 9 Ga. St. U. L. Rev. 689, 689 (1992) (identifying the beginnings and the root of the dispute over the waters of the ACF River Basin).

3 See *Florida's Motion for Leave to File a Complaint, Complaint, and Brief in Support of Motion* at 7 *Florida v. Georgia*, filed Oct. 1, 2013, No. 22O142 ORG.

4 *Id.*

5 Supreme Court of the United States, <http://www.supremecourt.gov/search.aspx?filename=/docketfiles/22o142.htm> (last visited Mar. 27, 2015).

6 *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1250 (11th Cir. 2002).

7 C. Hansell Watt, IV, Comment, *Who Gets the Hooch?: Georgia, Florida, and Alabama Battle for Water from the Apalachicola-Chattoohoochee-Flint River Basin*, 55 Mercer L. Rev. 1453, 1454 (2004).

8 *Id.* at 1455.

9 *Id.* at 1482.

10 *Id.* at 1484.

11 *Florida's Motion* at 19.

12 *State of Georgia's Opposition to Florida's Motion for Leave to File a Complaint* at 3 *Florida v. Georgia*, filed Jan. 31, 2014, No. 22O142 ORG.

13 Hansell Watt, IV, *supra* note 7, at 1485.

14 283 U.S. 336 (1931).

15 282 U.S. 660 (1931).

16 283 U.S. at 343-44.

17 *Id.* at 342.

18 282 U.S. at 662.

19 See *New York*, 283 U.S. at 343; *Connecticut*, 282 U.S. at 670.

20 Hansell Watt, IV, *supra* note 7, at 1483.

21 *Harloff v. City of Sarasota*, 575 So. 2d 1324, 1328 (Fla. 2d DCA 1991).

22 Elizabeth D. Purdum, *Florida Waters: A Water Resources Manual from Florida's Water Management Districts* 12 (2002), [http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd\\_repository\\_pdf/florida\\_waters.pdf](http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/florida_waters.pdf).

23 *Id.*

24 See *Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009).

25 *Id.*

26 *Id.* at 1088-89.

27 *Id.*

28 *Id.* at 1089.

29 Hannah Madans, *What Orange County Cities are Doing to Reduce Dependence on Outside Water*, Orange County Register, Oct. 13, 2014, <http://www.ocregister.com/articles/water-638249-percent-district.html>.

30 *Id.*

31 The United States Conference of Mayors, *Public Water Cost Per Household: Assessing Financial Impacts of EPA Affordability Criteria in California Cities* (Nov. 2014), <http://www.usmayors.org/pressreleases/uploads/2014/1202-report-watercostsCA.pdf>.

32 Madans, *supra* note 29.

33 South Coast Water District, <http://www.scwd.org/projects/oceandesal3.asp> (last visited Mar. 27, 2015).

34 *Id.*

35 Madans, *supra* note 29.

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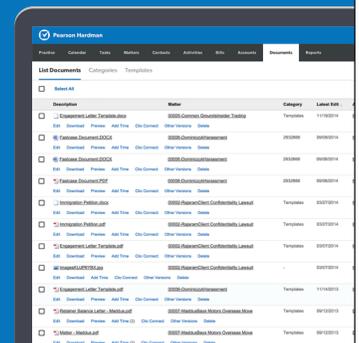
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# Sovereign Immunity Updates from The Florida Supreme Court

## High court is quick to use its new appellate rule; two additional decisions forthcoming

by Dan R. Hoffman

**I. Fla. R.App. P. 9.130(a)(3)(C)(x)-(xi).** On November 13, 2014, the Florida Supreme Court (FSC) issued an amendment to the Florida Rules of Appellate Procedure providing for interlocutory review to district courts of appeal of non-final orders which determine:

(x) that, as a matter of law, a party is not entitled to immunity under section 768.28(9), Florida Statutes; or

(xi) that, as a matter of law, a party is not entitled to sovereign immunity.<sup>1</sup>

The Appellate Court Rules Committee (Committee) proposed amendments to rule 9.130<sup>2</sup> in response to a request from the FSC in the majority opinion in *Keck v. Eminisor*, 104 So.3d 359, 366 (Fla. 2012). That request was to propose a narrow rule amendment, adopted by the Court as subdivision (x), which allows for interlocutory review of orders denying a defense under 768.28(9).<sup>3</sup>

Additionally, a majority of the Court joined a concurring opinion to recommend that the Committee also examine whether any or all other non-final orders denying claims of immunity should be subject to review.<sup>4</sup> The Committee responded to that request with a relatively inclusive approach, proposing that *any* claim of immunity from suit which is denied as a matter of law should be subject to interlocutory review. In its opinion adopting the rule amendment, the Court expressed a concern that such a proposal was potentially overbroad, and so limited the expansion of reviewable nonfinal orders to those addressing sovereign immunity.

At the Court's instruction, sovereign immunity, for officials and entities, thus becomes among the limited set of issues subject to interlocutory appeal pursuant to Rule 9.130(a)(3)

– issues which require jurisdictional or immediate determination.<sup>5</sup> This marks a significant change from the Court's refusal to expand R. 9.130 in *Department of Education v. Roe*, 679 So.2d 756 (1996)<sup>6</sup> and obviates the disagreements as to whether *Roe* thereby also precluded review through extraordinary writ.

Notably, although the Court expressed that it was narrowing the proposed rule in subdivision (xi), the published modification can also be viewed as broadening the proposal as well. The Committee's proposal was limited to "immunity[ies] *from suit*", thereby excluding instances in which the immunity at issue is arguably from *liability*, rather than from *suit*. This distinction had been at issue in *Roe* and subsequent FSC decisions, where the Court's primary desire – avoiding the expansion of certiorari review – led to statements which threatened the traditional protections of the sovereign immunity doctrine.<sup>7</sup> Thus, the Court's rule amendments cover sovereign immunity in its entirety, recede from *Roe* and its spawn,<sup>8</sup> and should avoid further suggestion of instances in which sovereign immunity does not include full immunity from suit.

**Words of Caution.** The rule, it should be said, will not allow review of all orders denying sovereign immunity – only those which do so expressly "as a matter of law." The distinction received some attention in the *Rodriguez* case, where the FSC disallowed the 3DCA's certiorari review in part because there were "essential facts in dispute."<sup>9</sup> Given prior statements from the Court that "the applicability of the sovereign immunity waiver is inextricably tied to the underlying facts",<sup>10</sup> plaintiffs will certainly resist review under the new rules by asserting that the order presents a mixed question of fact and law.

It will be crucial then to have the denial order explicitly state that the

ruling was made "as a matter of law." Indeed, in the analogous context of interlocutory district court review of orders denying absolute or qualified immunity in a civil rights claim arising under federal law, it is "well settled"<sup>11</sup> that such orders must contain specific language making the determination "as a matter of law."

**II. *Beach Community Bank v. City of Freeport*.** Although the FSC's rule opinion states that it was to become effective January 1, 2015, the Court found occasion to employ subdivision (xi) more immediately. Indeed, on the same day the Court published the amendment to R. 9.130, it also issued an opinion in *Beach Community Bank v. City of Freeport*, 150 So.3d 1111 (Fla.2014) (per curiam). That case (SC13-455) had been stayed at the FSC since May, 2013 pending the Court's resolution of *Rodriguez*. Once the FSC opinion in *Rodriguez* was issued, the Court initially signaled that it was inclined to quash the 1DCA Freeport decision which, relying on the 3DCA's decision in *Rodriguez*, had also employed a writ of certiorari. Despite that initial show cause order, the FSC accepted jurisdiction and issued its opinion in *Freeport*, employing the new subdivision (xi) even prior to its effective date.

The Court quashed the 1DCA's opinion with respect to its use of certiorari review, but proceeded to undertake review of a "pure question of law" which fell "squarely within the new rule amendment." That question of law turned on whether the City was immune to the bank's claim that the City had "failed to ensure a real estate developer posted an adequate security for completion of the infrastructure and failed to conduct a reasonable investigation to ascertain the authenticity and adequacy of the

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letter of credit, including whether the bank that issued the letter of credit was financially able to pay the letter of credit if it were called.<sup>12</sup>

Adopting the 1DCA's immunity analysis, the FSC agreed that the City was immune to the bank's claim because the determination of whether to investigate the authenticity of a posted letter of credit is a "discretionary" planning level function, falling within the municipality's inherent, fundamental policy-making authority. On an "operational" level, the City had complied with its own Land Development Code by approving "as adequate the amount of the security." The 1DCA, followed by the FSC, held that the City was free within its "inherent, fundamental policy-making authority" to not "dedicate resources towards fraud prevention by investigating the authenticity of the security", and that it was thus entitled to sovereign immunity from the Bank's claim.<sup>13</sup>

Although only four justices joined the opinion, there was no dissent as to the City's underlying immunity. Justice Canady and Justice Polston, who have tended to support sovereign immunity defenses and the interlocutory review of denials thereof, concurred in the result without joining any opinion. The seventh, Justice Lewis, had actually been the most vociferous member of the Court in calling for amendments to R. 9.130 to allow review of immunity denials without employing extraordinary writs,<sup>14</sup> but did not reach the merits in this case based on his objection to the "retroactive application of a significant Court opinion directed rule change."<sup>15</sup>

*Initial Duty Analysis Missing.* One interesting omission from the 1DCA and FSC *Freeport* opinions is any analysis of whether the City owed the Bank a duty of care with respect to investigating the developer's posted letter of credit. The FSC's own jurisprudence advises that the question of whether the sovereign owes the plaintiff a duty of care is "conceptually distinct" from any "later inquiry" of immunity defense.<sup>16</sup> This conceptual framework was raised by the City's counsel at each level and was even recited in the 1DCA opinion.<sup>17</sup> Nevertheless, neither

appellate court expressly examined whether the City owed any common law duty to the Bank – in a case where that duty is not readily apparent.

Given that an erroneous initial finding of a duty of care is not itself subject to interlocutory review, it remains to be seen whether courts reviewing nonfinal orders under the new subdivisions (x) and (xi) will utilize the conceptual framework which was already in place. That is, with appellate courts having rule authority limited to reviewing nonfinal orders denying defenses of sovereign immunity, will they still perform an initial duty inquiry as stated in *Wallace*. In the present case, the FSC had no difficulty determining that the claim implicated the degree to which the City enforced its own code – denoting a "discretionary" planning level function, comfortably within precedent.<sup>18</sup> However, in future cases where the discretionary vs. operational distinction may not be as clear, government practitioners will surely want to have the relevant court first engage in the duty analysis.

### Two Cases Pending Decisions

*DOT v. Schwefringhaus.* (SC14-69) On November 4, 2014, the FSC held oral argument in the case of *Department of Transportation v. Dorothy Schwefringhaus* to review a 2-1 decision of the Second District.<sup>19</sup> That majority opinion affirmed the trial court's judgment ordering DOT to indemnify a rail company for over \$500,000.00 for costs and attorneys' fees paid to settle a suit over DOT's negligent maintenance of a rail crossing. DOT's potential liability stems from an indemnity provision in a 1936 rail crossing agreement. The 2DCA majority rejected the DOT's arguments that the indemnity provision was void based on the department's lack of authority to agree to waive by contract that which it could not waive unilaterally, and that, alternatively, any such liability should be capped at \$200,000 pursuant to FS 768.28(5). Instead, the majority extended to a state subdivision the FSC's limited opinion in *American Home*, which enforced an indemnity provision contained in a comparable agreement with a *municipal* agency.<sup>20</sup> Judge Wallace authored a strong dissent, focusing on DOT's limited authority to act as a creature of statute, and arguing that the lack

of express authority to enter into an indemnity agreement puts this case outside of the Court's established jurisprudence that a state agency can be liable on its properly authorized contracts.<sup>21</sup>

The case has received significant attention from several amici curiae and was argued at the FSC by national appellate counsel appearing *pro hac vice* for CSX. Although the Second District attempted to limit the certified questions to the specific contract at issue, it was apparent in the briefs and at oral argument that the forthcoming decision could have broad implications across state agencies.

### *Citizens Immunity to Bad Faith Claims, Revisited.* (SC14-185)

The other sovereign immunity related case currently pending decision at the FSC concerns whether Citizens, the state owned insurer, is immune from bad faith claims despite its liability for "willful torts" – which issue the Court had previously declined to review on an interlocutory basis.<sup>22</sup> The instant case now asks the Court to answer the discrete question, certified by a unanimous panel of the First District,<sup>23</sup> of whether Citizens' statutory immunity, which derives not from general sovereign immunity but from specific statutory grant,<sup>24</sup> includes immunity from bad faith suits under Section 624.155(1), F.S. Because the case turns more on a matter of statutory interpretation than constitutional law, and because of the particularized basis for Citizens' immunity, the decision is not expected to have a broader impact on general sovereign immunity jurisprudence.<sup>25</sup>

### Endnotes:

1 *In re Amendments to Florida Rule of Appellate Procedure 9.130*, — So.3d —, No. SC13-1493, 2014 WL 5856302 (Fla. Nov. 13, 2014).

2 Florida Rule of Appellate Procedure 9.130 (Proceedings to Review Non-Final Orders and Specified Final Orders).

3 FL. ST. §768.28(9) provides official immunity for officers, employees and agents of the state and its subdivisions.

4 *Keck*, 104 So.3d at 370. (Pariente, J. concurring with an opinion in which Lewis, Labarga, and Perry, JJ. concur).

5 *See Fla. R.App. P. 9.130(a)(3)*, covering non-final orders limited to those that concern venue, injunctions, personal jurisdiction, immediate possession of property, significant family law determinations, entitlement to arbitration, etc.

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6 *Roe*, 679 So.2d at 759. (Declining “to create yet another nonfinal order for which review is available.”).

7 *Id.*, at 759. (“[A]lthough the state will have to bear the expense of continuing the litigation, the benefit of immunity from liability, should the state ultimately prevail on the sovereign immunity issue, will not be lost simply because review must wait until after final judgment.”). See also *Rodriguez v. Miami-Dade Cnty.*, 117 So.3d 400, 405 (Fla.2013) (Denying certiorari review where County’s “[c]osts, time, and effort in defending [] litigation does not constitute irreparable harm,” a necessary element for the extraordinary writ). *Id.*, at 410 (Canady, J., concurring in result only) (“The Court has never offered any cogent explanation of why the violation of immunity from suit does not constitute irreparable harm. The Court’s attempt to provide an explanation in *Citizens Property Insurance Corp. v. San Perdido Ass’n*, 104 So.3d 344, 355 (Fla.2012), illogically rests on the assertion that if an immune party was allowed to ‘show irreparable harm simply through the continuation of defending a lawsuit, such harm would apply to a multitude of situations’ such as the erroneous denials of motions to dismiss.”); See also *Citizens Property Insurance Corp. v. San Perdido Ass’n*, 104 So.3d 333, 356 (Fla.2012) (“[E]quating the defense of a lawsuit with the type of irreparable

harm necessary for the threshold decision to invoke certiorari has the potential to eviscerate any limitations on the use of this common law writ, which has always been narrowly applied.”).

8 Bad pun intended.

9 *Rodriguez*, 117 So.3d at 402.

10 *Roe*, at 758.

11 *Murray v. Rosati*, 929 So.2d 1090, 1092 (Fla. 4th DCA 2006); *Vermette v. Ludwig*, 707 So.2d 742 (Fla. 2d DCA 1997); See also, *Reeves v. Fleetwood Homes of Fla., Inc.*, 889 So.2d 812, 821–22 (Fla.2004) (“[N]onfinal orders denying summary judgment . . . are not appealable unless the trial court order specifically states that, as a matter of law, [workers’ compensation immunity] is not available to a party.” (quoting *Hastings v. Demming*, 694 So.2d 718, 720 (Fla.1997)).

12 *Beach Community Bank v. City of Freeport*, 150 So.3d at 1113.

13 *Id.* at 1114 (quoting *City of Freeport v. Beach Community Bank*, 108 So.3d 684, 690-691 (Fla. 1st DCA 2013)).

14 See *Citizens Prop. Ins. Corp. v. San Perdido Ass’n*, 104 So.3d 344, 358 (Fla.2012) (Lewis, J., specially concurring). (“Thus, I again emphasize that the ‘common sense mechanism’ to resolve the limited scope of certiorari review of interlocutory orders is for this Court to promulgate appellate rules that permit certain limited non-final review; not to eradicate the well-established, limited scope of certiorari review imposed under the common law and required by our constitution.”).

15 *Freeport*, 150 So.3d at 1115 (Lewis, J.,

concurring in part and dissenting in part).

16 *Wallace v. Dean*, 3 So.3d 1035, 1044 (Fla. 2009).

17 *Freeport*, 150 So.3d at 1113 (“The City moved to dismiss the complaint for failure to state a cause of action on the grounds that the City owed the Bank no common-law, statutory, or special duty of care, but even if a duty existed, the decisions at issue were policy-making, planning-level functions for which the City is immune from suit.”) The 1DCA also quoted *Wallace’s* two-step analysis at length. *Beach Community Bank*, 108 So.3d 684, 689 n.4.

18 *Freeport*, 150 So.3d at 1114. (Citing *Trianon Park Condo. Ass’n v. City of Hialeah*, 468 So.2d 912, 918-920 (Fla.1985) and *Carter v. City of Stuart*, 468 So.2d 955, 957 (Fla.1985)).

19 *Department of Transportation v. CSX Transp., Inc.*, 128 So.3d 209, (Fla. 2d DCA 2013), review granted, SC14-69, 2014 WL 1654458 (Fla. Apr. 3, 2014).

20 *American Home Assurance Co. v. Nat’l R.R. Passenger Corp.*, 908 So.2d 459, 474 (Fla.2005).

21 *Pan-Am Tobacco Corp. v. Dep’t of Corr.*, 471 So.2d 4 (Fla. 1984).

22 *Citizens Prop. Ins. Corp. v. San Perdido Ass’n, Inc.*, 104 So.3d 344 (Fla. 2012).

23 *Perdido Sun Condo. Ass’n v. Citizens Prop. Ins. Corp.*, 129 So.3d 1210 (Fla. 1st DCA 2014).

24 See F.S.A. § 627.351(6)(s).

25 *Citizens*, 104 So.3d at 357 (“Citizens’ immunity involves a matter of statutory construction that once resolved will not reoccur.”).

# Are You a Lawyer or a Lobbyist? You May Be Both

by Miriam S. Ramos, Esq.

During the nine years I served as an attorney for the Miami-Dade County Commission on Ethics and Public Trust, most recently as Deputy General Counsel, I often came across lawyers who were accused of engaging in unregistered lobbying. Although you do not have to be a lawyer to be a lobbyist, a large percentage of lobbyists in Miami-Dade County are also lawyers. Attorneys are often aware of lobbyist registration requirements but believe that they do not need to register because they see themselves as a lawyer, representing their client. Many of these individuals do not consider themselves lobbyists but unwittingly engage in lobbyist activity without realizing that they may be in violation of Miami-Dade County and/or municipal ordinances. This is the “lawyer-lobbyist conundrum.” Where

to draw the line requires an analysis of the precise activity the individual is engaged in, the stage at which the activity is taking place, who the individual is meeting with, and for what purpose.

## Who is a lobbyist in Miami-Dade County and the municipalities within its boundaries?

Miami-Dade County’s definition of “lobbyist” is very broad. It encompasses, “all persons, firms, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of: (1) ordinance, resolution, action, or decision of the County Commission; (2) any action, decision, or recommendation of the County manager [County Mayor] or any County board or committee; or (3) any action decision or recommendation of County

personnel during the time period of the entire decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee.” Sec. 2-11.1 (s), Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (the Ordinance)<sup>1 2</sup> This means that any individual who meets with a County or municipal elected/appointed official and/or employee on behalf of a third party, in order to influence that official or employee’s decision is a lobbyist, if the decision will be heard or reviewed by the County/City Commission or a County/City board or committee. In fact, it is the policy of Jackson Memorial Hospital that all pharmaceutical representatives are considered lobbyists under this definition and must register as such.

continued...

## LAWYER OR LOBBYIST?

from page 7

### The lawyer who is not a lobbyist.

The Code of Ethics specifically excludes certain individuals from the definition of "lobbyist." Among those exclusions are attorneys who are retained or employed for the sole purpose of representing individuals, corporations, or other entities during publicly noticed quasi-judicial proceedings where the law restricts *ex parte* communications. This exception is narrow and exempts attorneys only in very specific situations.

### The gray area.

The Code of Ethics provides a broad definition and very narrow exceptions for lawyers in certain circumstances. What about everything in between? This is where the lawyer-lobbyist must read carefully. Much depends on who the lawyer is meeting with and what is discussed.

For example, an attorney representing a bidder or a County contract met with the contract administrator as well as with the Assistant County Attorney representing the department. The Commission on Ethics found that the meeting with the contract administrator where the attorney attempted to convince the individual to find that the opposing bidder's submission was non-responsive constituted lobbying. Therefore, that lawyer had crossed over from the realm of "lawyering" to the realm of "lobbying" and engaged in unregistered lobbying. In contrast, the Commission on Ethics found that the meeting with the Assistant County Attorney, which involved a discussion about the procedure established for the filing of a bid protest, did not constitute lobbying.

### Err on the side of caution.

The example above illustrates how easily the lines can blur. If you are an attorney appearing before any County/municipal board, or meeting with a County/municipal official or employee regarding a matter that will be going before the County/City Commission or a County/municipal board, outside of a quasi-judicial setting, this is likely considered lobbying activity and it is best to register. It is easy for a discussion with a County/municipal official/

employee regarding a County/municipal matter to evolve into a lobbying effort. If your behavior can be interpreted as an effort to influence that individual's decision, you have crossed the line. Conversely, if you are speaking with an Assistant County/City Attorney during the course of on-going litigation that is likely not considered lobbying.

### The specifics on how to comply.

For individuals lobbying in the County, lobbyist registration forms may be found at: <http://www.miamidade.gov/cob/library/forms>. The cost of registration is \$490. Within 60 days of registering, the lobbyist must take a four-hour Ethics Course offered by the Commission on Ethics. The course registration form is available at [ethics.miamidade.gov](http://ethics.miamidade.gov). The cost of the course is \$100. Failure to take the course within the allotted time period can lead to a suspension of lobbyist privileges. Individuals who have expenditures relating to the lobbying effort must file a Lobbyist Expenditure Statement on July 1<sup>st</sup> of each year. Those who have not incurred expenses are not required to file.

For individuals lobbying in a municipality, lobbyist registration forms and information is available at the Clerk's Office for the municipality. Failure to register as a lobbyist but engaging in lobbying activity may result in the filing of an Ethics Complaint which carries a fine of \$500 per count and the potential for suspension or debarment.

### Better to ask.

It is acknowledged that the line between lawyering and lobbying can be easily blurred and that crossing from one realm into the other can easily occur without one taking notice. I encourage lawyers who are meeting with County officials or employees on a matter which foreseeably will be heard or reviewed by the County Commission, or a County board or committee, outside of a quasi-judicial public meeting to contact the Commission on Ethics and Public Trust in order to obtain an Ethics Opinion on the particular facts and circumstances surrounding their situation and whether it is considered lobbying, which requires registration. Ethics Opinions may be requested by e-mail at [\[miamidade.gov\]\(http://miamidade.gov\). Individuals who intend to lobby in a municipality should check the municipal lobbying ordinance as the registration process is often different and the requirements are often more restrictive. For an opinion on a municipal lobbying, individuals should contact that office of the City Attorney for that municipality.](mailto:ethics@</a></p></div><div data-bbox=)

*Miriam S. Ramos, Esq. currently serves as Deputy City Attorney for the City of Coral Gables. Previously, she was the Deputy General Counsel for the Miami-Dade Commission on Ethics and Public Trust. She worked for the Commission since 2005 and formerly served as Deputy Advocate. Prior to joining the Commission on Ethics, Ms. Ramos was an Assistant State Attorney in Miami-Dade County. She earned a Bachelor of Science from the University of Miami in Communications and Political Science with Honors and her Juris Doctor from the University of Miami in 2002. Ms. Ramos is an active member of the Cuban American Bar Associations and sits on their Pro Bono Committee. She mentored with the Take Stock in Children Program and is a member of the Educational Excellence School Advisory Council. Ms. Ramos also serves on the Professional Ethics Committee of the Florida Bar and on the board of the Children's Home Society, Miami Chapter. She has participated in numerous panel discussions, provided training and has appeared on radio and television discussing ethics in government. Ms. Ramos is also the recipient of the "40 Under 40 Outstanding Lawyers of Miami-Dade County" award for 2013.*

A version of this article previously appeared in the "Dade Bar Bulletin" a publication of the Dade County Bar Association.

### Endnotes:

1 "Principals" are also considered lobbyists. Therefore, a lawyer-lobbyist should make sure that his/her client is registered should he/she be included in a meeting that involves lobbying activity.

2 The Ordinance, "is applicable to all County personnel..., and shall also constitute a minimum standard of ethical conduct and behavior for all municipal officials and officers, autonomous personnel, quasi-judicial personnel, advisory personnel, departmental personnel, and employees of municipalities in the County insofar as their individual relationships with their own municipal governments are concerned." Sec. 2-11.1(a) of the Ordinance.



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# City County and Local Government Law Certification Review Course 2015

COURSE CLASSIFICATION: ADVANCED LEVEL

One Location: Thursday, May 7, 2015

B Hotel • 1905 Hotel Plaza Blvd • Lake Buena Vista, FL 32830  
407/827-6338

Course No. 1861R

8:00 a.m. – 8:15 a.m. **Late Registration**

8:15 a.m. – 8:20 a.m.

**Welcome**

*Dana Crosby-Collier, Shuffield Lowman, Orlando  
Chair; City, County and Local Government Law Section*

8:20 a.m. – 9:00 a.m.

**Public Finance**

*Grace E. Dunlap, Bryant Miller & Olive, P.A., Tampa*

9:00 a.m. – 9:45 a.m.

**Conflicts of Interest/Financial Disclosure**

*C. Christopher Anderson, III, Commission on Ethics, Tallahassee*

9:45 a.m. – 10:20 a.m.

**Ethics**

*Sheila M. Tuma, The Florida Bar, Orlando*

10:20 a.m. – 10:30 a.m. **Break**

10:30 a.m. – 11:15 a.m.

**Public Sector Employment Liability**

*Erin G. Jackson, Thompson, Sizemore, Gonzalez, Tampa*

11:15 a.m. – 11:45 a.m.

**Eminent Domain**

*Mary J. Dorman, HDR Engineering, Inc., Tampa*

11:45 a.m. – 1:00 p.m.

**Lunch (included in registration)**

1:00 p.m. – 1:45 p.m.

**Sunshine Law and Public Records Law**

*Patricia R. Gleason, Special Counsel for Open Government,  
Attorney General's Office, Tallahassee*

1:45 p.m. – 2:15 p.m.

**Procurements**

*Susan Churuti, Bryant, Miller & Olive, P.A., Tampa*

2:15 p.m. – 2:45 p.m.

**Sovereign Immunity**

*Greg Stewart, Nabors, Giblin & Nickerson, Tallahassee  
Ed Dion, Nabors, Giblin & Nickerson, Fort Lauderdale*

2:45 p.m. – 3:00 p.m. **Break**

3:00 p.m. – 3:45 p.m.

**Home Rule and Allocation of Taxing Powers**

*Ed Dion, Nabors, Giblin & Nickerson, Fort Lauderdale*

3:45 p.m. – 5:00 p.m.

**Land Use/Zoning and Practice & Procedures Before Local  
Government Legislative and Quasi-Judicial Bodies**

*Mark P. Barnebey, Blalock Walters, Bradenton  
Herbert W.A. Thiele, County Attorney, Leon County, Florida*

5:30 p.m. – 7:30 p.m.

**Chairs Reception - All section members, seminar attendees, and  
guests are welcome (included in registration).**

COURSE BOOKS WILL BE SENT VIA E-MAIL TO ALL REGISTRATIONS PRIOR TO THE REVIEW COURSE. FIRST ELECTRONIC E-MAILING WILL BE April 2. We strongly encourage you to purchase the book separately if you prefer your material printed but do not want to print it yourself.

Those who have applied to take the certification exam may find this course a useful tool in preparing for the exam. It is developed and conducted without any involvement or endorsement by the BLSE and/or Certification committees. Those who have developed the program, however, have significant experience in their field and have tried to include topics the exam may cover. Candidates for certification who take this course should not assume that the course material will cover all topics on the examination.

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**HOTEL RESERVATIONS:** A block of rooms has been reserved at the B Hotel, at the rate of \$139 single/double occupancy. To make reservations, call the B Hotel directly at (800) 248-7890. Reservations must be made by 4/15/15 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.

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**REGISTRATION FEE (CHECK ONE):**

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- Non-section member: \$290
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Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

Enclosed is my separate check in the amount of \$35 to join the City, County and Local Government Law Section. Membership expires June 30, 2015.

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# Public Finance in Florida

Course Classification: Intermediate Level (1862R)

*and*

# 38th Annual Local Government Law in Florida

Course Classification: Intermediate Level (1863R)

**Thursday - Saturday, May 7-9, 2015**

**B Resort  
Walt Disney World Resort  
1905 Hotel Plaza Blvd.  
Lake Buena Vista, FL 32830  
407/828-2828**

**Course No. 1862R  
1863R**

# Schedule of Events

## Public Finance in Florida (1862R)

### Thursday, May 7, 2015

8:00 a.m. – 8:50 a.m.

**Late Registration and Continental Breakfast**

8:50 a.m. – 9:00 a.m.

**Welcome and Opening Remarks**

9:00 a.m. – 9:45 a.m.

**Public Private Partnerships Under New Legislation**

*Kenneth R. Artin, Bryant Miller Olive P.A., Orlando*

9:45 a.m. – 10:30 a.m.

**New Municipal Advisor Rule—What's in it for Local Governments?**

*Peter L. Dame, Akerman LLP, Jacksonville*

10:30 a.m. – 10:45 a.m. **Break**

10:45 a.m. – 11:30 a.m.

**Post-Issuance Compliance: Tax and Disclosure**

*Taylor C. Pancake, Foley & Lardner, Orlando*

11:30 a.m. – 12:15 p.m.

**SEC Enforcement Initiatives**

*Brian J. Fender and Jennifer M. LaRocco, GrayRobinson, P.A., Tampa*

12:15 p.m. – 1:30 p.m.

**Lunch (included in registration)**

1:30 p.m. – 2:20 p.m.

**Florida Ethics Update**

*Lori Smith-Lalla, Greenberg Traurig, P.A., Fort Lauderdale*

2:20 p.m. – 3:00 p.m.

**EB-5 Visa Programs as an Economic Development Tool**

*Julie C. Ferguson, Carlton Fields Jordan Burt, Miami*

3:00 p.m. – 3:15 p.m. **Break**

3:15 p.m. – 4:00 p.m.

**Fire Services Assessment Programs and Other Developments in Alternative Revenue Sources**

*Chris Roe, Bryant Miller Olive P.A., Tallahassee*

4:00 p.m. – 4:45 p.m.

**The Great PACE Debate**

*Erin L. Deady, Erin L. Deady, P.A., Lantana*

*Elizabeth V. Lenihan, Marin Attorney's Office, Stuart*

5:30 p.m. – 7:30 p.m.

**Reception (section members, seminar attendees and guests are invited)**

## 38th Annual Local Government Law in Florida (1863R)

### Friday, May 8, 2015

8:15 a.m. – 8:30 a.m.

**Late Registration and Continental Breakfast**

8:30 a.m. – 8:40 a.m.

**Welcome and Introduction**

8:40 a.m. – 9:30 a.m.

**Domestic Partnerships and Human Rights Model Ordinances**

*Mary Meeks, Orlando*

9:30 a.m. – 10:15 a.m.

**Evidence: A Refresher Course**

*Leonard Birdsong, Barry University, Orlando*

10:15 a.m. – 10:30 a.m. **Break**

10:30 a.m. – 11:20 a.m.

**Forfeitures**

*John Dolatowski, Daytona Beach*

11:20 a.m. – 12:55 p.m.

**Lunch/Annual Meeting (included in registration fee)**

12:55 p.m. – 1:50 p.m.

**Transitioning to a Stand-Alone Self-Insurance**

#### **Program**

*Andrew Lannon, Palm Bay*

*Pete Sweeny, Palm Bay*

*Ben Few, III, Ft. Myers*

*Ben Few, IV, Ft. Myers*

1:50 p.m. – 2:40 p.m.

**Police Officer Body Cameras**

*Grant Alley, Ft. Myers*

2:40 p.m. – 2:55 p.m. **Break**

2:55 p.m. – 3:45 p.m.

**Public Records, Retention and Recent Developments Under the Public Records Act**

*David Migut, St. Johns County*

*Jon Gatto, Carlton Fields Jordan Burt, Tampa*

3:45 p.m. – 4:30 p.m.

**Eminent Domain**

*Carlos Kelley, Henderson Franklin, Ft. Myers*

4:30 p.m. – 5:20 p.m.

**Meetings of One and Other Current Sunshine Issues**

*Robert Eschenfelder, Bradenton*

5:30 p.m. – 7:30 p.m. **Reception**

*(continued, next page)*

## 38th Annual Local Government Law in Florida (1863R) *(continued from previous page)*

### **Saturday, May 9, 2015**

8:15 a.m. – 8:30 a.m.

#### **Continental Breakfast**

8:30 a.m. – 8:40 a.m.

#### **Opening Remarks**

8:40 a.m. – 9:20 a.m.

#### **Shade Meetings in Florida**

*Susan Churuti, Bryant Miller Olive, Tampa*

*Ellie Neiberger, Bryant Miller Olive, Tallahassee*

9:20 a.m. – 10:10 a.m.

#### **Preserving Attorney Fee Issues and Ethical Considerations Representing Local Governments and Local Government Officials**

*Craig Leen, Coral Gables*

*Andrew Lannon, Palm Bay*

10:10 a.m. – 10:25 a.m. **Break**

10:25 a.m. – 11:15 a.m.

#### **Quirk in Florida State Code Enforcement Statute Presents Potential Issues for Investors Buying Distressed Properties**

*Gary M. Kaleita, Lowndes Drosdick Doster Kantor Reed, P.A., Orlando*

11:15 a.m. – 12:00 p.m.

#### **Legislative Update**

*Kraig Conn, Florida League of Cities, Tallahassee*

*Virginia (Ginger) Saunders Delegal, Florida Association of Counties, Tallahassee*

## CLE CREDITS

### **Public Finance in Florida (1862R)**

General: 7.0 hours

Ethics: 1.0 hour

#### **CERTIFICATION PROGRAM**

(Max. Credit: 7.0 hours)

City, County & Local Government: 7.0 hours

State & Federal Gov't & Administrative Practice: 7.0 hours

### **38th Annual Local Government Law in Florida (1863R)**

General: 12.5 hours

Ethics: 1.0 hour

#### **CERTIFICATION PROGRAM**

(Max. Credit: 12.5 hours)

City, County & Local Government: 12.5 hours

Civil Trial: 2.0 hours

Real Estate: 2.0 hours

State & Federal Gov't & Administrative Practice: 12.5 hours

## Refund Policy

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## Hotel Reservations

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# Registration

## Register me for the “Public Finance in Florida and 38th Annual Local Government Law in Florida” Seminars

(142) B HOTEL, LAKE BUENA VISTA (MAY 7-9, 2015)

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### REGISTRATION FEE (CHECK ONE):

#### 1862R - Public Finance in Florida (5/7/15)

- Member of the City, County and Local Gov't Law Section: \$255
- Non-section member: \$290
- Full-time law college faculty or full-time law student: \$195
- Persons attending under the policy of fee waivers: \$100

#### 1863R - 38th Annual Local Government Law in Florida (5/8-9/15)

- Member of the City, County and Local Gov't Law Section: \$350
- Non-section member: \$385
- Full-time law college faculty or full-time law student: \$243
- Persons attending under the policy of fee waivers: \$100

### Reduced fee for both seminars

- Member of the City, County and Local Gov't Law Section: \$525
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by the Commission on Ethics staff. These trainings are free and can be easily accessed at any time from one's computer by going to <http://ethics.state.fl.us> (use the left drop down menu); and

- The Institute of Government offers online ethics and Sunshine law training for a nominal fee at [http://iog.fsu.edu/events/online\\_training/index.html](http://iog.fsu.edu/events/online_training/index.html).

The Florida Commission on Ethics

will continue to post training opportunities as they become available. Please check their website frequently for updates at <http://ethics.state.fl.us>.

**Endnotes:**

- 1 Ch. 2013-36, Laws of Florida; Ch. 2014-183, Laws of Florida
- 2 Section 112.3142, Florida Statutes
- 3 Section 4, Ch. 2013-36, Laws of Florida
- 4 Ch. 2014-183, Laws of Florida
- 5 Section 112.3142, Florida Statutes
- 6 Section 3, Ch. 2014-183, Laws of Florida



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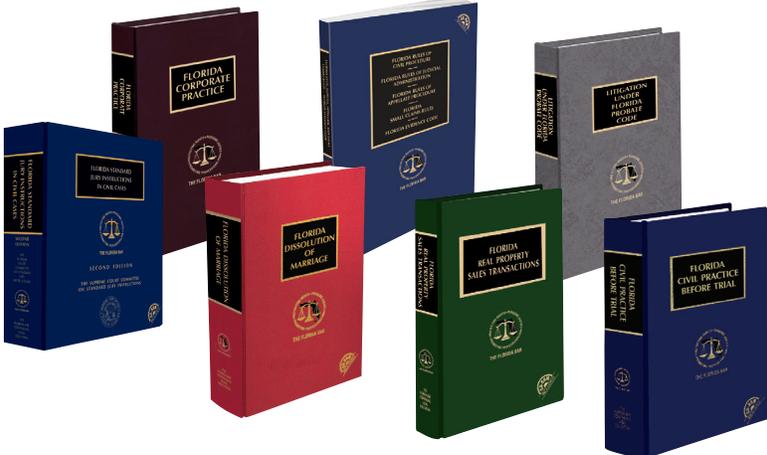
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