CITY, COUNTY AND LOCAL GOVERNMENT LAW SECTION

The Agenda

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Oregon's Measure 37: A New Property Rights Initiative in a Leading Comprehensive Planning State

by Nancy E. Stroud, JD/AICP

On November 2nd, 2004, Oregon voters passed an initiative known as Measure 37, which requires state and local governments to compensate property owners for any loss of value in land occurring due to regulations enacted after the owner's purchase of the land. Measure 37 amends the state's statutes. It is similar in some respects to Florida's "Harris Act", but goes beyond the Florida legislation in many ways.

The successful initiative follows the Oregon Supreme Court's invalidation last year of a similar Oregon initiative ("Measure 7") in 2000 that amended the state constitution to require such compensation. The American Planning Association, with other planning public interest organizations, filed amicus curiae brief supporting the earlier measure's invalidation.[1] APA argued that Measure 7 would significantly increase the cost of implementing and enforcing regulations, seriously degrade the quality of life that Oregonians had built as a result of 30 years of planning controls and successful land use management, and give priority to the right of the private individual to develop land at the expense of the wider community that may be harmed by that development.

Measure 37's provisions include, in part:

> "If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation (equal to) …the fair market value of the affected property interest…(as) of the date the owner makes a written demand for compensation under this act."

Claims under the new initiative can be made to regulatory restrictions that preceded the initiative, for a period of two years from the later of 1) initiative's effective date or 2) the date the public entity applies the regulation to a development application. If a new regulation is enacted, claims can be made for two years after the later date of either the enactment or the application of the regulation to a development application. Not only may the current owner of the property claim compensation, but if the current owner's family, going back to a grandparent, owned the property in whole or in part, the initiative entitles the current owner to a claim. This apparently means that regulation includes attorney's fees and other costs incurred to collect the compensation. As an alternative to paying compensation, the government may decide to remove the regulation as it applies to the property.

Measure 37 has been criticized as sidestepping the normal public notice and hearing safeguards for development applications, creating unfair case by case waivers, and creating additional costs and complications for due diligence analysis for real estate transactions, in addition to the same criticisms as leveled against Measure

See "Oregon's Measure" page 16

INSIDE:

Chair's Report

A•G•E•N•D•A

by Craig H. Coller

As this is my final column as chair of the section (thank goodness), I want to take this opportunity to thank the many members of the Section who are responsible for its success. It has been an honor to chair a Section whose members are called upon to practice in perhaps what is the most diverse and ever changing area of the law.

Among the section's accomplishments this year is a vastly improved website. In particular, substantial progress has been made towards posting the *Lawyer's Desk Book* online. Thanks to all the contributors to the deskbook and to Marion Radson for coordinating the effort. Additional thanks to Grant Alley for getting our new website off the ground.

The section continues to be on sound financial footing. As such, I am pleased to report to you that the Section was in a position to make substantial contributions to the Claude Mullis Memorial Scholarship Fund, the Lawyer's Challenge for Children Fund and the Florida Bar's Hurricane Relief Fund.

The year took a rather tumultuous turn when the section found itself at odds with The Florida Bar's Board of Governor's special committee on the proposed Rules of Professional Conduct as applied to local government lawyers. Although modifications were made to certain aspects of the new rules, other provisions remained unchanged. After considered debate, the Executive Council voted to voice objection to the these provisions that would, among other things, restrict local government lawyers from simultaneously representing organizations or departments having adverse interests within the same governmental entity. I want to thank Elizabeth Hernandez and Marion Radson for presenting to the Board of Governors a reasonable alternative to those proposed rules. Although we did not prevail at that stage of the proceedings, Liz and Marion represented the section with dignity and professionalism. On behalf of the Section, Marion has filed comments with the Supreme Court of Florida. The comments appear on our website at www.locgov.org. I am pleased to report that the Florida League of Cities as well as a number of Florida's local governments have filed comments with the Supreme Court supporting our position.

I also want to thank the many members of the Section responsible for the outstanding seminars that the section has produced this year. These include Kaye Collie, Michael Grogan, Elizabeth Hernandez, Karl Sanders, and Herb Thiele. I hope that you will consider making every effort to attend our Certification and Annual Seminars which will be held at the Gaylord Palms Hotel in Orlando/Kissimmee on May 5th through the 7th. As you can tell from the brochures which appear in this issue of *The Agenda*, these seminars will be extremely informative and relate to the daily practice of local government law.

Of course, you would not be able to read this article were it not for the dedicated work of our editors Elizabeth Hernandez and Joe Jarret. Publishing *The Agenda* is labor intensive and I appreciate their volunteering for this task.

Also responsible for the Section's success are the dedicated members of our Executive Council, including our past chairs who serve as *ex officio* members. Besides chairing the many programs of the section, the Executive Council provided me with invaluable assistance and wisdom in helping to set the Section's goals and priorities. It should be noted that they actively participated even though many of them were personally and professionally affected by the number of hurricanes that struck our state this past year.

I hope that you have subscribed to our list serve on the Section's website and are receiving case updates. Many thanks to Judge James R. Wolf, Chief Judge for the First District Court of Appeal and former Section chair as well as his judicial assistant Judy Tehan for preparing these case summaries and providing us with this valuable service.

I have left to last the most important person to thank, our section administrator Carol Kirkland. The Section simply could not operate without her. Although she has other sections under her portfolio, she somehow manages to ensure that our programs are implemented. She does so with a sunny disposition and great humor. I cannot thank her enough for the help that she has given me this past year.

I am grateful for having had the opportunity to serve as chair of section. I know that Kaye Collie will do a great job as your incoming chair. I look forward to serving in what I have been told is the best position to have on the executive council, immediate past chair. See you at the Gaylord Palms Hotel!

Endorsement of Attorney-Client Privilege in Government Arena Sets 2nd Circuit Apart

by Mark Hamblett, New York Law Journal, 02-24-2005

Tuesday's endorsement of the attorney-client privilege for government officials by the 2nd U.S. Circuit Court of Appeals may be a strong candidate for U.S. Supreme Court review.

By agreeing that legal counsel for former Connecticut Governor John Rowland could assert the privilege applied to conversations about a federal investigation into quid pro quos for gifts the governor received, the panel admittedly staked out a position it said was in conflict with one other federal appeals court and "in sharp tension" with decisions in two other circuits.

Unlike other circuits, including the D.C. Circuit when it ordered Deputy White House Counsel Bruce Lindsey to testify about former President Bill Clinton's relationship with Monica Lewinsky, the 2nd Circuit in *United States v. John Doe*, 04-2287-cv, said that, if anything, "the traditional rationale for the privilege applies with special force in the government context."

"It is crucial that government officials, who are expected to uphold and execute the law and who may face criminal prosecution for failing to do so, be encouraged to seek out and receive fully informed legal advice," Chief Judge John M. Walker Jr. said. "Upholding the privilege furthers a culture in which consultation with government lawyers is accepted as a normal, desirable, and even indispensable part of conducting public business."

Connecticut District Court Judge Robert N. Chatigny had ordered Anne C. George, former chief legal counsel to the Office of the Governor, to answer questions before a grand jury about her conversations with Rowland and his staff concerning the federal probe.

The scandal ended last year with the resignation of Rowland and his entry of a guilty plea on Dec. 23 to one count of conspiracy to steal honest service.

The 2nd Circuit reversed Chatigny after hearing an expedited appeal in August, finding that George would not have to testify.

A panel of Judges Walker, Dennis Jacobs and Pierre Leval released a 20-page opinion on Tuesday explaining their rationale.

'GROUNDED' OPINION

Robert K. Vischer, who teaches legal ethics as an assistant professor of law at St John's University School of Law, called the decision "a very thoughtful, very realistic discussion of the relationships between government officials and their lawyers," one that was "a little more grounded in the real world" than the D.C. Circuit's opinion in *Lindsey*.

In *Lindsey*, he said, the appellate court said that "we shouldn't worry about the chilling effect on government officials because they don't have the belief that they would discuss criminal conduct with their attorneys."

"That's a little naïve, because often it is not at all clear whether some conduct will be criminal," he said. Vischer cited the "minutiae" of regulations governing the fund-raising calls of Vice President Al Gore from the White House as one example of the "expanding range of criminal liability for public officials."

Chatigny approached the Rowland case, which was captioned "John Doe" because of the pending grand jury investigation, on the theory that a government lawyer has two clients, the officeholder they work for directly and the public.

Chatigny had written that "unlike a private lawyer's duty of loyalty to an individual client, a government lawyer's duty does not lie solely with his or her client agency," but also with the public.

In the circuit's ruling, Walker began by noting that "courts have by reason and experience concluded that a consistent application of the privilege over time is necessary to promote the rule of law by encouraging consultation with lawyers, and ensuring that lawyers, once consulted, are able to render to their clients fully informed legal advice."

And "serious legal thinkers," he said, "have considered the privilege's protections applicable in the government context," while the case law "generally assumes the existence of a governmental attorney-client privilege in civil suits between government agencies and private litigants."

The U.S Attorney's Office for the District of Connecticut argued that recent case law in other circuits recognized the existence of the privilege in the government context but considered it weaker than the privilege in the private setting.

The prosecution cited three cases, the 7th Circuit's ruling in *In re: A Witness Before the Special Grand Jury*, 288 F.3d 289 (2002), the Lewinsky ruling in the 1998 case of *In re Lindsey*, 158 F.3d 1263, and *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, (8th Cir. 1997).

All three decisions, Walker said, "broadly questioned the relevance of the traditional rationale supporting the privilege to the government context."

Using those decisions, he said, the prosecutors argued that the reasons the rationales historically offered for the privilege "do not apply with the same force" in the Rowland case because the discussions concerned an investigation into potential criminal conduct.

The U.S. attorney, he said, contended that the "privilege should not be used as a shield to permit George, a government attorney, to withhold client confidences, when revealing them would be in the public interest."

But Walker said, "We cannot accept the Government's unequivocal assumption as to where the public interest lies" because, while it is certainly in the public interest for a

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The Florida Bar Continuing Legal Education Committee and the City, County and Local Government Law Section present

2005 City, County and Local Government Law Certification Review Course

COURSE CLASSIFICATION: ADVANCED LEVEL

One Location: May 5, 2005
Gaylord Palms Hotel • 6000 W. Osceola Parkway • Kissimmee, FL • 407/586-2000
Course No. 0225R

This course is designed to cover a broad spectrum of legal issues facing city, county and local government lawyers. The presentation will serve as a review of areas on the City, County and Local Government Law Certification Examination. This course will not necessarily prepare you for the City, County and Local Government Law Certification Examination. The individuals involved in the preparation of the City, County and Local Government Law Certification Examination have not contributed to this program. However, the examination will cover any or all of the nine subject areas, each of which will be addressed in the course.

8:10 a.m. – 8:30 a.m.
Late Registration

8:30 a.m. – 8:35 a.m.
Welcome
Craig H. Coller, Chair, City, County and Local Government Law Section, Miami

8:35 a.m. – 9:10 a.m.
Public Finance
Grace E. Dunlap, Bryant Miller & Olive, Tampa
Alexandra "Sandy" MacLennan, Squire, Sanders & Dempsey, Tampa

9:10 a.m. – 9:40 a.m.
Conflicts of Interest/Financial Disclosure
Charles A. "Chris" Anderson, Commission on Ethics, Tallahassee

9:40 a.m. – 10:30 a.m.
Ethics
Jan Wichrowski, The Florida Bar, Orlando

10:30 a.m. – 10:45 a.m.
Break

10:45 a.m. – 12:15 p.m.
Public Sector Employment Liability
Erin Jackson, Thompson Sizemore & Gonzalez, P.A., Tampa

12:15 p.m. – 1:30 p.m.
Lunch (included in registration)

1:30 p.m. – 2:15 p.m.
Sunshine Law and Public Records Law
Patricia R. Gleason, General Counsel, Office of the Attorney General, Tallahassee

2:15 p.m. – 3:00 p.m.
Home Rule and Exercise of Police Powers
Robert L. Nabors, Nabors, Giblin & Nickerson, Tallahassee

3:00 p.m. – 3:15 p.m.
Break

3:15 p.m. – 3:45 p.m.
Procurements
Susan Churuti, Pinellas County Attorney, Clearwater
Michelle Wallace, Pinellas County Attorney's Office, Clearwater

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, Kirk Pinkerton, Bradenton
Herbert W.A. Thiele, Leon County Attorney, Tallahassee

6:30 p.m. – 8:00 p.m.
Chairs Reception - All section members & seminar attendees welcome

COURSE BOOKS: COURSE BOOKS WILL BE MAILED TO ALL REGISTRANTS PRIOR TO THE REVIEW COURSE BUT NOT AFTER April 8, 2005. IF YOU REGISTER AFTER April 8, 2005 YOU WILL RECEIVE THE COURSE BOOK ON-SITE ONLY. Bring your book with you or you will be required to purchase the book on-site if you desire a copy during the review course. A limited number of books will be available at the review course.

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(Max. Credit: 8.0 hours)
General: 8.0 hours Ethics: 1.5 hours

CERTIFICATION PROGRAM

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Prior to your CLER reporting date (located on the mailing label of your Florida Bar News) you will be sent a Reporting Affidavit or a Notice of Compliance. The Reporting Affidavit must be returned by your CLER reporting date. The Notice of Compliance confirms your completion of the requirement according to Bar records and therefore does not need to be returned. You are encouraged to maintain records of your CLE hours.

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HOTEL RESERVATIONS: A block of rooms has been reserved at the Gaylord Palms Hotel, at the rate of $155 single occupancy and double occupancy. To make reservations, call the Gaylord Palms direct at (407)586-2000. Reservations must be made by 04/06/2005 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):

- ❑ Member of the City, County & Local Government Law Section: $185
- ❑ Non-section member: $200
- ❑ Full-time law college faculty or full-time law student: $122.50
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Florida Case Summaries

Editor's Note: The following case law summaries were reported from September 1, 2004 through December 31, 2004.

Section 1. Recent Decisions of the Florida Supreme Court

Florida Religious Freedom Restoration Act – Municipal ordinance that prohibits vertical grave markers in city-owned cemetery does not violate FRFRA. The Florida Supreme Court responded to two certified questions from the Eleventh Circuit Court of Appeals concerning interpretation and application of the Florida Religious Freedom Restoration Act ("FRFRA"). As to the first certified question, the Court considered whether the FRFRA broadens the definition of what constitutes religiously motivated conduct protected by law beyond the conduct considered protected by decisions of the U.S. Supreme Court. The Court concluded that it did. It explained that FRFRA expands the free exercise right as construed by the U.S. Supreme Court because it applies the compelling interest test to neutral laws of general application. Further, FRFRA defines "exercise of religion" to include any act or refusal to act whether or not compelled by or central to a system of religious belief. Finally, the Court explained that under FRFRA, only government regulations that "substantially burden" a person's exercise of religion are subject to the compelling interest standard. The Court concluded that a substantial burden on the exercise of religion is one that either compels conduct that a religion forbids or forbids conduct that a religion compels. As to the second certified question, the Court considered whether a city ordinance that prohibited the use of vertical grave markers in a city-owned cemetery violates the FRFRA. The Court concluded the ordinance did not constitute a substantial burden on the exercise of religion within the meaning of FRFRA. *Warner v. City of Boca Raton*, 29 Fla. L. Weekly S454 (Fla. Sept. 2, 2004).

Utilities – City has right to continue receiving franchise fee under expired franchise agreement where electric utility continues to use public rights-of-way. Florida Power Corporation (FPC) provided electrical service within the City of Winter Park pursuant to a franchise agreement with the City. When the agreement expired, the City and FPC reached an impasse in negotiating a new agreement. FPC retained possession of the City's rights-of-way and continued to operate as the sole provider of electricity, but refused to remit the franchise fee to the City. The City sought a declaratory judgment as to its right to continue receiving the franchise fee. The trial court and district court determined the City was entitled to continue receiving the fee. On conflict jurisdiction (with *Florida Power Corp. v. Town of Belleair*, 830 So. 2d 852 (Fla. 2d DCA 2002)), the Supreme Court agreed. It held that expiration of the franchise agreement did not convert the franchise fee into an unconstitutional tax, and that the franchise agreement was a permissible, bargained-for exchange. During the holdover period, where the City continued to maintain the rights-of-way and FPC continued to receive the benefit of access to rights-of-way and status as the sole electrical provider, the court will imply a contract at law to enforce the City's right to receive compensation. In the absence of an implied contract, FPC would be unjustly enriched. *Florida Power Corp. v. City of Winter Park*, 29 Fla. L. Weekly S630 (Fla. Oct. 28, 2004).

Section 2. Recent Decisions of the Florida District Courts of Appeal

Sovereign Immunity – Action against clerk of court and sheriff for wrongful arrest barred by sovereign immunity. Plaintiff, who was wrongfully arrested and incarcerated after clerk of court failed to notify sheriff's office that capias for his arrest had been set aside, brought action against clerk and sheriff. The Fourth DCA upheld the trial court's dismissal of the case, concluding the action was barred by sovereign immunity because the clerk and sheriff did not owe plaintiff a special duty that was different from the duty owned to the public in general. *Lovett v. Forman*, 29 Fla. L. Weekly D1953 (Fla. 4th DCA, Aug. 25, 2004).

Public Utilities – Utility authority's "Base Facility Charge" on campgrounds for water and wastewater service is a user fee and not a special assessment. Campground facilities challenged the manner in which the Okeechobee Utility Authority calculated its "Base Facility Charge" for water and wastewater service. The campgrounds claimed the charge constituted a special assessment, which, pursuant to section 189.420, F.S., would have required the utility to assess the campgrounds as if they were hotels or motels. The trial court granted summary judgment for the campgrounds, but the Fourth DCA reversed. The Fourth DCA found the charge was a user fee and thus did not trigger the requirements of section 189.420. Specifically, the Court found the charge was a user fee based on the following: the charge is imposed only on those opting to connect to the utility's lines; a property owner may avoid the charge by refusing service; the charge is imposed monthly; the charge is not imposed to recover the costs of improvements; and the utility is authorized by chapter 367 to impose user fees. *Okeechobee Utility Authority v. Kampgrounds of America, Inc.*, 29 Fla. L. Weekly D2016 (Fla. 4th DCA, Sept. 1, 2004).

Forfeiture – Claimant did not have standing to challenge forfeiture of currency. Plaintiff was stopped for a routine traffic infraction and consented to a search of a suitcase that was in plain view in the backseat of his car. The suitcase contained $489,880 in twenty-dollar bills, and plaintiff claimed the money was not his but had been given to him by a person he did not know. The police seized the money for forfeiture. Plain-

tiff subsequently requested an adversarial preliminary hearing under the Contraband Forfeiture Act. The trial court found plaintiff did not have standing to participate because he did not present sworn proof of a possessory or ownership interest in the money. The Third DCA affirmed, but certified conflict with a decision of the Fourth DCA that did not require a claimant to demonstrate a proprietary interest in the property, but only that claimant show he was "in possession" of the property at the time of seizure. *Velez v. Miami-Dade County Policy Department*, 29 Fla. L. Weekly D2075 (Fla. 3d DCA, Sept. 15, 2004).

Public Employees – Board of Trustees of retirement trust fund properly ordered forfeiture of former police chief's retirement benefits after he was convicted of mail fraud. Former police chief appealed an order from the board of trustees of the city's firefighters' and police officers' retirement trust, which directed the forfeiture of his retirement benefits, after he was convicted of mail fraud for diverting funds from a private, not-for-profit corporation for personal use. Section 112.3171(3), F.S., requires the forfeiture of retirement benefits from a public retirement system when a public officer or employee commits a "specified offense," including the embezzlement of public funds. The former police chief argued that he did not commit a "specified offense" within the meaning of section 112.3171(3) because he did not take public funds – only private funds. The Third DCA disagreed. It concluded the funds at issue were in fact public where the city transferred public funds to the not-for-profit corporation, which was required to use the funds to carry out city functions. *Warshaw v. City of Miami Firefighters' and Police Officers' Retirement Trust*, 29 Fla. L. Weekly D2076 (Fla. 3d DCA, Sept. 15, 2004).

Injunctions – Property owner was not entitled to injunction against demolition of house. Property owner appealed an order denying his motion for injunction and alternative motion to stay the demolition of a house he had been constructing over a five-year period. The Town of Ponce Inlet issued a stop work order and an order to vacate and demolish the house based on 151 reported violations of applicable building codes. The Town's Board of Adjustments and Appeals held eight evidentiary hearings on the matter. The Fifth DCA upheld the denial of the property owner's motions. It found the Board's extensive evidentiary hearings would preserve evidence of owner's alleged noncompliance with building codes in the event of demolition. While the owner would suffer financial harm, the Court recognized that such harm is permissible when it results from a valid exercise of police power. Also, the owner failed to demonstrate a likelihood of success on the merits given substantial evidence at Board of Adjustment hearings that his house was unsafe and dangerous to human life. *Dragomirecky v. Town of Ponce Inlet*, 29 Fla. L. Weekly D2091 (Fla. 5th DCA, Sept. 17, 2004).

Prohibition – Florida Building Commission does not have jurisdiction to review petition from property owner arising from building permits issued prior to adoption of Florida Building Code. The Town of Ponce Inlet petitioned for a writ of prohibition to restrain the Florida Building Commission from exercising jurisdiction over an administrative petition that challenged the Town's order to vacate and demolish a house under construction. The First DCA granted the writ. The court concluded the Florida Building Commission did not have jurisdiction to review the matter because the property owner's building permits were issued prior to March 1, 2002. According to section 553.73(5), F.S., building permits submitted prior to that date are subject to the minimum building code in effect (in this case, the Town's) for the life of the permit. Therefore, the permits at issue were issued prior to the adoption of the Florida Building Code and were not within the jurisdiction of the Florida Building Commission. *Town of Ponce Inlet v. Dragomirecky*, 29 Fla. L. Weekly D2162 (Fla. 1st DCA, Sept. 27, 2004).

Due Process – Temporary moratorium on development did not violate procedural or substantive due process rights. Developer of multi-family housing projects brought an action against the City of Coral Springs, contending the City's nine-month moratorium on processing site plan applications for multi-family development violated procedural and substantive due process. The Fourth DCA upheld the trial court's judgment for the City. It held the City's use of zoning in progress and its adoption of a temporary moratorium in the processing of multi-family development applications did not deprive Plaintiff of any substantive due process rights or affect a temporary taking of Plaintiff's multi-family zoned parcels. It explained the City was entitled to enact a moratorium as a land use tool to promote effective planning and preserve the status quo during a review of its land use regulations pertaining to multi-family development. *WCI Communities, Inc. v. City of Coral Springs*, 29 Fla. L. Weekly D2196 (Fla. 4th DCA, Sept. 29, 2004).

Competitive Bidding – County's award of bid is a legislative act. A disappointed bidder sought certiorari review of Miami-Dade County's award of a bid for a software contract. The court transferred the action from its appellate division to the general jurisdiction division. The Third DCA affirmed the transfer. It held the County's bid award was a legislative act not subject to certiorari review, despite procedural requirements in the County's code that appeared to color the decision as a quasi-judicial action (such as notice and evidentiary hearing). *MRO Software, Inc. v. Miami-Dade County*, 29 Fla. L. Weekly D2229 (Fla. 3d DCA, Oct. 6, 2004).

Sovereign Immunity – Error to dismiss claims against city for negligent hiring, training, supervision, and retention. Plaintiff sued the City of West Palm Beach and two code inspectors. He alleged counts of assault and battery against the inspectors and counts of negligent hiring, training, supervision, and retention, against the City. The trial court dismissed Plaintiff's claims against the City on sovereign immunity grounds. The Fourth DCA reversed. It found that Plaintiff suffi-

continued...

CASE SUMMARIES
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ciently stated a claim against the City where Plaintiff alleged that: the City knew of the assault and battery by code inspector, Plaintiff's previous complaints against the inspector, and inspector's abusive conduct toward other members of public; that City took no action to ensure public safety; and that he suffered damages due to the City's negligent retention, training and supervision. *Slonin v. City of West Palm Beach*, 29 Fla. L. Weekly D2343 (Fla. 4th DCA, Oct. 20, 2004).

Public Records – Clerk of circuit court has duty to respond to public records request that is sufficiently specific. Where a petitioner's written request identified with specificity the public records requested (specific records associated with petitioner's three criminal cases) and requested information about the costs of copying them, the Fourth DCA held that clerk of court was obligated to respond to the request for information as to copying costs. *Woodard v. State of Florida*, 29 Fla. L. Weekly D2348 (Fla. 4th DCA, Oct. 20, 2004).

Vested Rights – Proposed changes to Development of Regional Impact were not vested from county comprehensive plan. Section 163.3167(8), F.S., provides that once a Development of Regional Impact (DRI) is approved, the right to develop pursuant to the terms of the DRI vests. In this case, a developer proposed changes to a previously approved DRI. The changes did not constitute a "substantial deviation" from the original DRI development order and thus did not trigger further regional review (i.e., the changes were not required to undergo a new DRI review process). Because the changes did not trigger additional DRI review, the developer contended the changes were vested from further review or approval by the local government, including compliance with the local comprehensive plan. The Florida Land and Water Adjudicatory Commission disagreed, and the First DCA affirmed its decision. It held that while DRIs previously authorized are vested from further review and may be completed according to the terms of the development order, any changes to the DRI must obtain approval from the local government and must comply with the comprehensive plan. *Bay Point Club, Inc. v. Bay County*, 29 Fla. L. Weekly D2375 (Fla. 1st DCA, Oct. 25, 2004).

Labor relations – City did not engage in unfair labor practice over collective bargaining agreement. The City of Winter Springs appealed an order of the Public Employees Relations Commission that found the City had committed unfair labor practices by imposing "pay freeze" language on union members in a new collective bargaining agreement, and by imposing a management rights article that had been amended after the union declared an impasse. The First DCA reversed on both issues. It found that imposition of "pay freeze"

Calendar of Events

EXECUTIVE COUNCIL SCHEDULE 2004-2005

September 10, 2004
11:30 a.m. - 2:30 p.m.
Tampa Airport Marriott • Tampa

October 21, 2004
5:00 p.m. - 6:00 p.m.
Rosen Center Hotel • Orlando

January 6, 2005
9:30 a.m. - 12:00 noon
Teleconference Meeting

May 5, 2005
Gaylord Palms • Kissimee

May 6, 2005
Section Annual Meeting
Gaylord Palms • Kissimmee

June 24, 2005
Bar Annual Meeting
Marriott World Center • Orlando

SEMINAR SCHEDULE 2004-2005

Public Employment Labor Relations Forum
October 21-22, 2004
The Rosen Center Hotel • Orlando

Joint Seminar with ELULS
November 5, 2004
Marriott Waterside Hotel • Tampa

2005 Certification Review Course
May 5, 2005
Gaylord Palms • Kissimmee

28th Annual Local Government Law in Florida
May 6-7, 2005
Gaylord Palms • Kissimmee

language following impasse resolution proceedings before the city council after the parties waived the special master process did not constitute an unfair labor practice, but was in line with the status quo in that "pay freeze" language had been used in previous agreements. The pay freeze language did not waive the employer's obligation to bargain, nor did it require the union to waive bargaining rights over wage increases. Further, the Court held that PERC misconstrued section 447.403, F.S., in finding that employer had committed an unfair labor practice by submitting a management rights article to the city council following a declaration of impasse. The management rights article had been previously negotiated at the bargaining table. While the employer's action would have been permissible had the parties used a special master process, PERC determined it was not permissible where the parties waived the special master process and proceeded directly to resolution by the governing body. The Court disagreed with this interpretation, and held that pursuant to 447.403, the parties are allowed to change their positions during impasse, whether before a special master or before a legislative body, provided the amended proposals do not touch on a topic that has not been previously negotiated at the bargaining table. *City of Winter Springs v. Winter Springs Professional*, 29 Fla. L. Weekly D2501 (Fla. 1st DCA, Nov. 5, 2004).

Municipal Charter – City permitted to convey recreational facility property without a referendum. The Fourth DCA withdrew its earlier opinion in this case (29 Fla. L. Weekly D1913) and reached a different conclusion about the City of Pompano Beach's authority to convey property without a referendum. The City charter provided the City could transfer property designated as a recreational facility only after a referendum. In this case, the City by ordinance redesignated a recreational facility to a different classification that did not require a referendum to sell or transfer. The City then authorized conveyance of the property to a community redevelopment agency. Noting the City charter permitted the City to change the designation of the property by ordinance, the Court held the City's redesignation and subsequent conveyance was permissible under the charter. *Shulmister v. City of Pompano Beach*, 29 Fla. L. Weekly D2603 (Fla. 4th DCA, Nov. 17, 2004).

Whistleblower – Florida Civil Rights Act – City prevails on Whistleblower Act and FCRA claims brought by former assistant police chief. Plaintiff, a former assistant police chief for the City of Miramar, filed a Whistleblower's Act claim against the City, alleging he was demoted by the City in retaliation for disclosing improprieties by the City's independent contractor towing company. While that litigation was pending, the City fired Plaintiff. Plaintiff then amended his complaint by adding a count for wrongful termination under the Florida Civil Rights Act (FCRA). The FCRA allegations were completely unrelated to the Whistleblower claim. In the FCRA claim, Plaintiff contended he was wrongfully discharged for actions taken with regard to another police officer's sexual harassment claim. Specifically, Plaintiff told the other officer of procedures for filing a sexual harassment claim and gave her the phone number of the EEOC, and documented the conversation in a memorandum to the police chief. The memorandum did not give any specific information about the nature of the sexual harassment. The Fourth DCA affirmed a final judgment in favor of the City on the Whistleblower claim and affirmed a directed verdict for the City on the FCRA claim, but reversed the final judgment on the FCRA claim. It held the trial court did not abuse its discretion in submitting a verdict form to the jury on the Whistleblower claim that paralleled the court's instruction on law that was given at Plaintiff's request, and that issue was a mixed question of law and fact that was properly presented to the jury. It further held that Plaintiff's actions and termination were not protected under the FCRA because they predated the filing of a formal EEOC charge by the other officer. In addition, the actions were too vague to qualify as protected activity under the FCRA. Even had Plaintiff established a prima facie case under the FCRA, the City proffered a legitimate, non-discriminatory reason for his termination, which was not refuted by Plaintiff. Finally, the Court held it was error for the trial court to enter a final judgment against Plaintiff on his FCRA claim where Plaintiff announced a voluntary dismissal of the claim prior to entry of the final judgment, and the claim was entirely unrelated to his Whistleblower Act claim. *Guess v. City of Miramar*, 29 Fla. L. Weekly D2612 (Fla. 4th DCA, Nov. 17, 2004).

Charter Amendment – Ballot summary for urban growth boundary charter amendment fails to comply with Section 101.161(1), F.S. A proposed amendment to the Volusia County charter purported to establish an urban growth boundary and incorporate it into the county comprehensive plan. The trial court held the ballot summary for the charter amendment failed to comply with section 101.161(1), F.S., which requires a ballot summary to "state in clear and unambiguous language the chief purpose of the measure." The Fifth DCA agreed, finding the first sentence of the ballot summary (establishment of the boundary "benefits Volusia County's natural resources, scenic beauty, orderly development and the welfare of its citizens") amounted to mere "political rhetoric." In addition, the court found the remainder of the summary failed to give fair notice of the content of the amendment. In particular, the summary did not mention that establishment of the boundary was not self-executing but would instead be subject to the political processes of local governments. *Volusia Citizens' Alliance, etc. v. Volusia Home Builders Ass'n, Inc.*, 29 Fla. L. Weekly D2643 (Fla. 5th DCA, Nov. 18, 2004).

Labor Relations – Arbitrator exceeded authority by addressing matters preempted to PERC. The Indian River County School Board unilaterally modified the health insurance plan applicable to its employees, in rough accordance with section 447.4095, F.S., due to a perceived financial urgency after unsuccessful negotiations with employee's union resulted in declaration of impasse.

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The union filed a grievance alleging contract violations in regard to the unilateral action by the school board. The parties ultimately wound up in arbitration. The School Board argued the arbitrator was not permitted to determine matters relating to Chapter 447, because such issues are within the exclusive jurisdiction of PERC. Nevertheless, the arbitrator ruled the School Board violated the collective bargaining agreement and ruled that it did not follow various requirements of Chapter 447. The School Board moved to vacate the arbitration award, on the basis that the arbitrator exceeded his powers under section 682.13(1), F.S. by basing his decision on matters preempted to PERC. The trial court agreed and vacated the award, and the Fourth DCA affirmed. The court found the arbitrator, while claiming to rule exclusively on the contractual provisions of the collective bargaining agreement, relied on and made numerous references to Chapter 447. *Communications Workers of America v. Indian River County School Board*, 29 Fla. L. Weekly D2650 (Fla. 4th DCA, Nov. 24, 2004).

Injunctions – City met all four elements to support injunctive relief against continued operation of stone-cutting business. The City of Delray Beach brought an action against a stone-cutting business for failure to comply with conditional use approval requirements. The City and the business ultimately entered a settlement agreement and the court entered a Consent Final Judgment. The agreement and a subsequent court order required the business to undertake certain site improvements and file monthly progress reports. Unhappy with the business' progress under the terms of the agreement, the City filed motions asking the court to find the business violated the settlement and to issue an injunction prohibiting further operation of the business. The trial court granted the City's motions. On appeal, the Fourth DCA affirmed. It found the City established all four elements for injunctive relief. In addition, the Court determined the trial court did not err in finding that business' use of the property was not a grandfathered permitted use because the grandfathering issue was rendered moot by the settlement, which dismissed with prejudice all claims the parties could have brought against each other. Finally, the Court found the trial court properly denied the business' motion to vacate or modify the settlement and consent decree based on business' assertion that City and business shared a mistaken assumption that it was possible to complete improvements in the time allotted in the consent decree. *Keystone Creations, Inc. v. City of Delray Beach*, 29 Fla. L. Weekly D2672 (Fla. 4th DCA, Nov. 24, 2004).

Public Records – Property Appraiser's GIS maps are public records and not subject to copyright protection. Plaintiff who sought copies of property appraiser's GIS maps challenged the property appraiser's requirement that prospective commercial users of the maps first enter into a licensing agreement. Plaintiff contended the maps were public records and could not be subject to a licensing agreement. The property appraiser did not dispute the maps were public records, but contended the maps were copyrighted under federal law. The Second DCA agreed with Plaintiff. It explained that Florida law determines whether a governmental entity may claim copyright in its creations. It noted examples in Florida's Public Records Act providing specific categories of public records that may be copyrighted, and specific statutes authorizing certain government agencies to obtain copyrights. It concluded that Florida does not provide any statutory authority for a property appraiser to hold a copyright. *Microdecisions, Inc. v. Abe Skinner*, 29 Fla. L. Weekly D2685 (Fla. 2d DCA, Dec. 1, 2004).

Eminent domain – Injury to remaining land caused by change in surface water flow is consequential damage resulting from taking and must be recovered in eminent domain proceeding. A property owner appealed a final judgment entered in an eminent domain proceeding, contending the court erred in prohibiting him from introducing evidence as to his allegation that DOT's taking of one parcel would cause the flooding of his remainder property, and evidence as to the resulting severance damages. DOT had argued the property owner's flooding claim should be brought as an inverse condemnation claim, if and when flooding occurs. The Fifth DCA reversed. It explained that injury by a condemnor to the remaining land caused by changing the flow of surface waters, which does not amount to a permanent deprivation of the use of such remaining land, is a consequential damage resulting from the eminent domain action, and must be recovered in the eminent domain proceeding. *Blankenship v. Department of Transp.*, 29 Fla. L. Weekly D2705 (Fla. 5th DCA, Dec. 3, 2004).

Inverse condemnation – Ambiguity as to language purporting to dedicate a strip of property owners' land for future road precluded entry of summary judgment for county. Subdivision landowners brought an action for inverse condemnation against Orange County after the County took a 60-foot strip of property for purposes of widening a road. The Fifth DCA reversed an order of summary judgment for the County. The Court held the language used on the subdivision plat purporting to reserve the strip for road use was ambiguous. In addition, the Court found an ambiguity existed as to the relationship between the "easement reserved" language affixed to the area in dispute and general dedication language used elsewhere on the plat. *Black v. Orange County*, 29 Fla. L. Weekly D2708 (Fla. 5th DCA, Dec. 3, 2004).

Building Permits – Plaintiffs' challenge to issuance of building permit dismissed for failure to exhaust administrative remedies. Condominium associations brought an action challenging Collier County's issuance of a building permit for proposed condominium. The trial court dismissed the action because it deferred to the County's interpretation of its land development code and because the associations failed to exhaust their administrative remedies. On appeal, the Second DCA was inclined to disagree with the County's interpretation of the code.

However, the Court found the trial court properly dismissed the action for failure to exhaust administrative remedies where the associations had failed to pursue the County's administrative procedure for obtaining an official interpretation of the applicable provisions of the code from the planning director. *Vanderbilt Shores Condominium Ass'n v. Collier County*, 29 Fla. L. Weekly D2776 (Fla. 2d DCA, Dec. 10, 2004).

Forfeiture – Standing to contest probable cause for forfeiture of seized currency. The Third DCA addressed two cases *en banc* in order to clarify the standing requirements at the preliminary adversarial hearing stage of a forfeiture of seized currency proceeding pursuant to the Florida Contraband Forfeiture Act. The court noted that standing at this stage is often confused with the merits of the actual case. In one case, the Court held that a "person entitled to notice" under the Act who had sworn his unconditional ownership of the subject currency, who had never disavowed such ownership, and for which no other competing claim had been made to the seizing authority, had a sufficient property interest to confer to him standing to proceed with his claims at the adversarial preliminary hearing stage of a forfeiture proceeding pursuant to the Act. In the other case, the Court remanded for a new hearing on standing because there was evidence the person entitled to notice had contradicted himself as to the ownership of the currency. In addition, the Court held the Act's ten-day time requirement for providing the adversarial preliminary hearing is mandatory, but where the seizing authority has acted immediately and the delay is caused by the court, the forfeiture action should not be summarily dismissed unless the claimant can show harm. *Chuck v. City of Homestead*, 29 Fla. L. Weekly D2829 (Fla. 3rd DCA, Dec. 15, 2004).

Section 3. Recent Decisions of the United States Supreme Court

Speech – City was not barred from terminating police officer for off-duty conduct. The City of San Diego terminated one of its police officers for selling sexually explicit videotapes that he made while wearing a police uniform, and for related activity. While the uniform worn in the video was not that of a San Diego police officer, the terminated officer offered San Diego uniforms for sale on the Internet and his user profile stated that he was employed in the field of law enforcement. The terminated officer brought an action against the City, contending the City's action violated his First and Fourteenth Amendment rights to free speech. The district court granted summary judgment for the City, but the Ninth Circuit Court of Appeals reversed. On a petition for writ of certiorari to the Supreme Court, the Supreme Court reversed the Ninth Circuit. The Court had no difficulty in concluding the speech at issue did not qualify as a matter of public concern under any view of the public concern test. The conduct at issue was widely broadcast, linked to his official status as a police officer, and designed to exploit his employer's image. The Court concluded the speech in question was detrimental to the mission and functions of his employer. In addition, it concluded there was no basis for finding the speech was of concern to the community as the Court's cases have understood that term in the context of restrictions by governmental entities on the speech of their employees. *City of San Diego v. Roe*, 18 Fla. L. Weekly Fed. S21 (Dec. 6, 2004).

Section 4. Recent Decisions of the United States Court of Appeals, Eleventh Circuit

Religion – School district entitled to summary judgment on First Amendment claims arising from requirement that student remove religious words and symbols from school murals. Plaintiff filed an action against school board, contending the school board violated her First Amendment rights by compelling her to remove religious words and symbols from murals painted for a school beautification project. The Eleventh Circuit affirmed an order granting summary judgment in favor of the school board based on conclusions that: 1) the school board never created a public forum; 2) the murals were school-sponsored speech; and 3) school board's action was reasonably related to legitimate pedagogical objectives of disassociating the school from religious organizations and the endorsement of religious views, and avoiding disruption to the learning environment from religious debate on the walls of the school. *Bannon v. School District of Palm Beach County*, 17 Fla. L. Weekly Fed. C1113 (11th Cir., Oct. 12, 2004).

Civil Rights – City's use of mass magnetometer searches of protestors violated First and Fourth Amendments. Non-violent protest organization brought action against the City of Columbus, Ga., challenging the City's use of mass magnetometer (metal detector) searches of persons wishing to participate in annual protest on public property outside of military base. The Eleventh Circuit held the City's actions violated protestors' Fourth Amendment right to be free from unreasonable searches and First Amendment free speech rights. It found that neither September 11 concerns nor Department of Homeland Security's "elevated" threat advisory level justified mass searches, nor were the mass searches justified by a "special need" to keep protesters safe by detecting weapons and contraband. Protestors had a legitimate expectation of privacy, and no exigent circumstances existed that would excuse warrant requirement for such searches. Further, the Court found the searches violated the First Amendment in the following ways: the searches were a burden on free speech imposed through the exercise of unbridled discretion; the searches were a form of prior restraint on speech; the search policy was implemented based on the content of the protestors' speech; even if content neutral, the searches were an unreasonable time, place and manner limitation; and the search policy constituted an "unconstitutional condition" in that protestors were required to give up their Fourth Amendment rights in order to exercise their First Amendment rights. *Bourgeois v. Peters*, 17 Fla. L. Weekly Fed. C1125 (11th Cir., Oct. 15, 2004).

Adult Entertainment – Exotic dancer did not have standing to challenge revocation of club's adult entertainment license. After the City of Casselberry revoked the adult entertainment license of a strip

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club, an exotic dancer at the club challenged the constitutionality of the applicable City code, and sought declaratory and injunctive relief. The Eleventh Circuit affirmed the district court's determination that plaintiff lacked standing to bring the suit. Plaintiff failed to demonstrate an injury for standing purposes because the revocation of the club's license did not preclude plaintiff from pursuing her chosen career at another location. Further, because plaintiff's allegations were based on past harm, the Court concluded she failed to show a real and immediate threat of future injury to support her claim for declaratory and injunctive relief. *Koziara v. City of Casselberry*, 18 Fla. L. Weekly Fed. C99 (11th Cir., Dec. 8, 2004).

Section 5. Recent Decisions of the United States District Courts for Florida

Employment Discrimination – County entitled to summary judgment on claims brought under Title VII, the ADA, and Section 1983. Plaintiff employed by Miami-Dade County police department as a Public Service Aide alleged he was discriminated against because other officers mimicked his voice and accent. Plaintiff claimed such mimicry created a hostile work environment and that he was subjected to retaliation when he filed a complaint. Plaintiff brought suit against the County alleging violation of his rights under Title VII, the ADA, and his First Amendment rights under section 1983. The court granted summary judgment for the county on the hostile work environment claims because the conduct in question was not persistent and routine, and did not rise to the level of offensiveness to support Plaintiff's claim. The court granted summary judgment for the county on the retaliatory discharge claim because Plaintiff failed to establish a causal link between his protected action and the adverse employment action. The court granted summary judgment for the County on Plaintiff's claim under the ADA because there was no evidence the county regarded Plaintiff as incapable of performing a wide-range of administrative duties, as opposed to regarding him as incapable of performing his work as a Public Service Aide. The court granted summary judgment for the county on Plaintiff's First Amendment claims under section 1983 because the county cannot be held liable for alleged discriminatory acts of mid-level managers who were not policymakers. *Lopez v. Miami-Dade County*, 17 Fla. L. Weekly Fed. D1054 (S.D. Fla., July 13, 2004).

Zoning – Religious organization not entitled to partial summary judgment on claims under federal Religious Land Use and Institutionalized Persons Act and Florida Religious Freedom Restoration Act. A synagogue sued the City of Aventura, claiming the city's denial of a conditional use permit to relocate the synagogue violated the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Florida Religious Freedom Restoration Act (FRFRA). Plaintiff contended the City' code, to the extent it requires conditional approval by the City commission before religious organizations may locate within certain zoning districts, violates the federal law because groups that use a "party room" in an adjacent condominium are comparable nonreligious assemblies that have been treated on more favorable terms than Plaintiff. In addition, Plaintiff contended the City's denial of a conditional use permit violated the Florida law by imposing a substantial burden on Plaintiff's religious beliefs. The district court denied Plaintiff's motion for partial summary judgment. As to Plaintiff's substantial burden claim, the court found there were facts in dispute as to whether denial of the conditional use permit imposed a substantial burden. In addition, the court explained that in examining this issue, the inquiry goes beyond the inadequacy of the current location versus the adequacy of the proposed location. Rather, the court is required to determine whether the City's application of its regulations has imposed pressure so significant as to require Plaintiff's congregation to forego their religious beliefs. The court found insufficient evidence to support Plaintiff's motion as to the disparate treatment claim where Plaintiff failed to address the land use regulations that govern the adjacent condominium "party room" as compared to those regulations that govern Plaintiff's operation in the proposed location. *Williams Island Synagogue, Inc. v. City of Aventura*, 17 Fla. L. Weekly Fed. D1035 (S.D. Fla., Aug. 2, 2004).

Employment – City entitled to summary judgment on claims of reverse discrimination and negligent misrepresentation. Plaintiff brought a reverse discrimination and negligent misrepresentation claim against the City of Riviera Beach, after the City revoked an offer to sponsor Plaintiff to police academy. The City revoked the offer of sponsorship after it learned the sponsorship would violate the City's anti-nepotism ordinance because the police department employed Plaintiff's mother. The district court granted summary judgment for the City. It found that Plain-

This newsletter is prepared and published by the City, County and Local Government Law Section of The Florida Bar.

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tiff failed to establish a prima facie case of racial discrimination by showing that he was qualified to do the job. Plaintiff could not legally qualify for the job because of the anti-nepotism ordinance. Even had Plaintiff established a prima facie case, he failed to show that City's justification for revoking the sponsorship (the anti-nepotism ordinance) was merely pretext for the City's discriminatory conduct. Isolated instances of City's employment of temporary or part-time employees in violation of ordinance did not establish that City had a standard policy of violating the ordinance in favor of African American employees. Further, the court found that City was not negligent, nor did it induce plaintiff to rely on representation that Plaintiff would be sponsored. Also, City could not be liable for conduct for which it had no common law or statutory duty of care. *Tavcar v. City of Riviera Beach*, 19 Fla. L. Weekly Fed. D60 (S.D. Fla. Aug. 9, 2004).

Affirmative Action – County's Minority and Women Business Enterprise programs held unconstitutional as applied to County architectural and engineering contracts. Engineering firms owned by white males brought equal protection challenge to sections of Miami-Dade County's Minority and Women Business Enterprise programs establishing "participation goals" for minority and women businesses in awarding County architectural and engineering contracts. Although the County's programs had been previously found unconstitutional as applied to sectors of the construction contracting industry, the County did not amend the remaining sections of its programs. The district court concluded the programs were unconstitutional as applied to architectural and engineering contracts, and permanently enjoined the County from using gender, race or ethnicity in awarding architectural and engineering contracts. In addition, the court found the County commissioners absolutely immune in their individual capacities for their votes in favor of the programs and their decisions not to modify or repeal the programs. However, it concluded that commissioners would not receive absolute immunity for their votes to apply the programs to architectural and engineering contracts that were presented to them because they were acting in their administrative capacity. Because the law was clearly established from a previous challenge that the programs were unconstitutional, the court found the commissioners were not entitled to qualified immunity and are liable for any compensatory or punitive damages in their individual capacities. In this case, however, the plaintiffs failed to prove any compensatory damages and the court found that punitive damages were not warranted. *Hershell Gill Consulting Engineers, Inc., et al. v. Miami-Dade County, et al.*, 17 Fla. L. Weekly Fed. D949 (S.D. Fla., Aug. 24, 2004).

Racial Discrimination – County entitled to summary judgment on employment discrimination claim. Plaintiff, a former Miami-Dade County police officer, brought a racial discrimination action against Miami-Dade County when he was terminated following an internal affairs investigation. The investigation revealed that Plaintiff was planning a theft of money from drug dealers. The Court found that Plaintiff failed to establish a prima facie case of race discrimination and failed to show that County's reason for terminating him was merely a pretext. Plaintiff failed to show that he was dismissed because of his race or national origin where he failed to identify similarly situated, non-minority employees who were treated more favorably. Further, the evidence showed the County had a legitimate non-discriminatory reason to terminate Plaintiff based on findings that Plaintiff planned to commit grand theft, that he violated standards regarding ethical conduct, failed to obey pertinent rules and procedures, and made misrepresentations and false statements to an Internal Affairs investigator. *Mizell v. Miami-Dade County*, 17 Fla. L. Weekly Fed. D1190 (S.D. Fla., Oct. 22, 2004).

Section 6. Announcements

FMAA Website
Please visit the FMAA website at **www.fmaa.us** for municipal attorney news, an online version of this newsletter, and discussion boards.

Mark Your Calendar
The 2005 Florida Municipal Attorneys Association Seminar will be held July 21-23, 2005, at Amelia Island Plantation.

***Florida Municipal Laws Manual* Available**
The *2004 Florida Municipal Laws Manual*, created by Municipal Code Corporation in cooperation with the League, provides a convenient statutory reference source for local government personnel in Florida. Statutory provisions most relevant to municipal government, current through the 2004 legislative sessions, are included. The manual is available in both paperbound and electronic formats at the cost of $78 each, or both formats can be purchased for $104. To purchase the manual, call Municipal Code Corporation at (850) 576-3171.

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ENDORSEMENT OF ATTORNEY
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grand jury to collect all the facts, "it is also in the public interest for high state officials to receive and act upon the best possible legal advice."

Walker said the people of Connecticut have indicated that the latter interest is more important, because Connecticut law specifically upholds the governmental privilege "even in the face of a criminal investigation."

"We do not suggest, of course, that federal courts, charged with formulating federal common law, must necessarily defer to state statutes in determining whether the public welfare weighs in favor of recognizing or dissolving the attorney-client privilege," he said. "But we cite the Connecticut statute to point out that the public interest is not nearly as obvious as the Government suggests."

Vischer said the circuit was clearly inviting review of its decision.

The circuit "acknowledges it is creating conflict with other circuits and it also acknowledges that uniformity and predictability are essential," he said. The court is "signalling that this is a conflict that needs to be resolved," he added.

The Florida Bar Continuing Legal Education Committee and the City, County and Local Government Law Section present the

28th Annual Local Government Law in Florida

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

May 6-7, 2005

Gaylord Palms Hotel • 6000 W. Osceola Parkway • Kissimmee • 407-586-2000

Course No. 0229R

About the Course

The 27th Annual Local Government Law in Florida seminar is the annual seminar sponsored by the City, County and Local Government Law Section of The Florida Bar. Its goal is to update practitioners from the private and public sector of local government law on newly developing cases and issues. This course assumes that attendees are conversant with basic issues of local government law, and the seminar's goal is to provide a broad based approach to issues facing local government lawyers.

Schedule of Events

Friday, May 6, 2005

8:15 a.m. – 8:50 a.m. **Late Registration**

8:50 a.m. – 9:00 a.m.
Opening Remarks
Craig Coller, Chair, City, County and Local Government Law Section, Miami
Kaye Collie, Program Chair, City, County and Local Government Law Section, Orlando

9:00 a.m. – 9:45 a.m.
Ethics
C. Christopher "Chris" Anderson III, Commission on Ethics, Tallahassee

9:45 a.m. – 10:15 a.m.
Public Records and the Courts
Hon. Jacqueline R. Griffin, 5th District Court of Appeals, Daytona Beach

10:15 a.m. – 10:30 a.m. **Break**

10:30 a.m. – 11:00 a.m.
School Capacity Innovation in Charter Counties: Using the Charter as a Tool
Vivien Monaco, Assistant Orange County Attorney, Orlando

11:00 a.m. – 11:30 a.m.
What the Corps Can Do for You
Brooks Moore, Army Corps of Engineers, Jacksonville

11:30 a.m. – 12:00 noon
Impact of Bankruptcy on Collection Issues
Michael Paasch, Mateer & Harbert, P.A., Orlando

12:00 noon – 1:30 p.m.
Annual Meeting and Luncheon (included in registration fee)
Nominations: Chair-elect – Mary Helen Campbell, Tampa
Secretary/Treasurer – Elizabeth Hernandez, Coral Gables

1:30 p.m. – 2:15 p.m.
Religious Land Use and Institutionalized Persons Act
Professor Stephen Gey, Florida State University, Tallahassee

2:15 p.m. – 3:15 p.m.
Successful Strategies in Defending Employment Litigation, From Civil Rights to Wage and Hour Issues
Michael Grogan, Coffman Coleman Andrews & Grogan, P.A., Jacksonville
Robert Sniffen, Moyle Flanigan, et al, Tallahassee

3:15 p.m. – 3:30 p.m. **Break**

3:30 p.m. – 5:30 p.m.
Hurricane Preparedness
Joseph Jarret, Polk County Attorney, Bartow
Ajit Lalchandani, Orange County Administrator, Orlando
Anne Gibson, Senior Assistant Polk County Attorney, Bartow
Jeffrey Steinsnyder, Kirk Pinkerton, Bradenton

6:00 p.m. – 7:30 p.m.
Section Reception
(all section members, seminar attendees and guests welcome)

Saturday, May 7, 2005

8:00 a.m. – 8:30 a.m. **Refreshments**

8:30 a.m. – 9:10 a.m.
Land Use Issues and Section 1983
Gary Glassman, Assistant Orange County Attorney, Orlando

9:10 a.m. – 9:40 a.m.
Takings Law Update: The Latest U.S. Supreme Court Decisions and Other Developments
Thomas Pelham, Fowler White, Tallahassee

9:40 a.m. – 10:00 a.m. **Break**

10:00 a.m. – 11.00 a.m.
Impact of Land Use Classification on Ad Valorem Tax
Thomas Wilkes, GrayRobinson, P.A., Orlando
Derek Bruce, GrayRobinson, P.A., Orlando

11:00 a.m. – 11:30 a.m.
Legislative Update
Herbert W. A. Thiele, Leon County Attorney, Tallahassee

CLER PROGRAM

(Maximum Credit: 11.0 hours)
General: 11.0 hours
Ethics: 1.0 hour

CERTIFICATION PROGRAM

(Maximum Credit: 9.0 hours)
City, County & Local Govt. ..... 9.0 hours
Real Estate ..... 3.5 hours

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, for more information about the CLER and Certification Requirements.

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Registration

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- ❑ Full-time law college faculty or full-time law student: $177.50
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7. The new initiative was not funded by any new revenues, although the Oregon Secretary of State has estimated that taxpayers will pay up to $344 million per year in administrative costs for its implementation. The Oregon League of Cities, which opposed the measure, has developed an implementation ordinance for claims processing.

The President of the Oregon chapter of the American Planning Association explains the initiative's success as follows: "My own view is that Measure 37's passage was the product of a variety of things, including a deceptively innocuous ballot title that contributed to a lack of understanding of the full implications of the measure. Proponents offered well-told stories that went unchallenged and played to an underlying frustration with "the system." I do not believe the majority of the electorate intended to devastate long-range comprehensive planning." He recommends that the chapter continue its efforts to educate the public of the benefits of comprehensive planning. Is Measure 37 the next generation of private property rights legislation? Stay tuned.

For more information, visit www.oregonapa.org, www.friends.org or www.orcities.org.

Footnotes:

[1] The author is a member of the APA Amicus Curiae Committee which sponsored the amicus brief. The Oregon Court found Measure 7 to be invalid based upon a procedural irregularity, because it violated the state constitution's balloting requirements that mandate separate votes for amendments to different parts of the constitution.

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