
THE BRECHNER REPORT

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Ex-Mayor's libel suit against FDLE dismissed

MIAMI – A circuit judge dismissed former Miami Mayor Xavier Suarez's libel suit against the Florida Department of Law Enforcement.

LIBEL

Suarez filed the suit as a result of a press release the FDLE distributed in 1997 that described voter fraud during Suarez's campaign.

The release said one of Suarez's campaign workers obtained and cast three fraudulent absentee ballots.

The worker eventually pleaded guilty to three counts of false reporting in an election and three counts of casting fraudulent votes.

The FDLE's investigation of Suarez's campaign resulted in the arrest of dozens of other people on voter fraud charges and led to Suarez's 1997 mayoral victory being overturned.

In his lawsuit, Suarez said the FDLE falsely accused his 1997 campaign of fraud. He said the allegations of illegal conduct eroded his professional standing, and lost clients and potential partners in business ventures. He claimed the FDLE's statements cost him \$100,000 in earnings.

Circuit Judge Thomas Wilson Jr. held that the FDLE's press release was not libelous and dismissed the suit.

Suarez said he plans to appeal Judge Wilson's decision. (5/2/00)

Official agreed to confidentiality

TAMPA – University of South Florida Athletic Director Paul Griffin signed a confidentiality agreement with Florida 2012, a group trying to bring the Olympics to Florida.

USF is a state university, and therefore is subject to Florida's Sunshine Laws unless specifically exempted.

The agreement came to light after the *St. Petersburg Times* requested a copy. At first, Griffin said he didn't have one. Then, Florida 2012 provided a copy to the paper.

Griffin's confidentiality agreement prevents Griffin from discussing specific

topics regarding the Olympics in Tampa. Those topics include budgets, bid plans, strategies, venue specifications, housing plans and financial contributors.

ACCESS MEETINGS

Griffin agreed in writing not to "disclose any of such information to any person or use any such information for any purpose, except at such times and under circumstances approved by Florida 2012."

Florida 2012 is exploring potential sites and plans for a stadium. The USF is a primary option. (6/7/00)

Seminole's suit thrown out

BROWARD COUNTY – A Broward county judge dismissed a lawsuit filed by the Seminole Tribe that accused reporters from the *St. Petersburg Times* of interfering with the tribe's business practices.

The suit claimed that two reporters from the paper

FIRST AMENDMENT

interfered by interviewing employees about tribe business and asking them to reveal confidential financial information. The tribe requested an injunction to prevent the *Times* from reporting on the tribe's activities.

Judge J. Leonard Fleet dismissed the suit and refused to issue the injunction on the grounds that both interfered with the freedom of the press. In his ruling, Judge Fleet wrote that the restrictions the tribe called for were on "the short road to despotism."

"This judge refuses to believe the proud American Indian nation, no matter how harshly it has been treated, would want to take such a journey," Fleet wrote. (4/29/00)

ADVERTISING

University newspaper bans fertility ads

FORT MYERS – *The Eagle*, a biweekly newspaper for the Florida Gulf Coast University, banned human fertility advertising.

The ban came in the wake of a medical practice's attempt to place an ad in the paper. Specialists in Reproductive Medicine and Surgery

wanted to place an ad offering women \$2,000 to donate their eggs.

The medical company was told of the ban in a joint letter from the newspaper's faculty advisor and editor-in-chief. The letter also stated that to run such ads would "spur controversy that would ultimately be detrimental to [the] small and struggling paper." (4/20/00)

Tax district violated Sunshine Law to discuss litigation

TAMPA PALMS – The Tampa Palms Community Development District violated Florida's Open Meetings Law at least four times in the years between 1996 and 1999, according to Circuit Judge Manuel Menendez Jr.

Community activist Bob Doran sued the tax district claiming that the group held four closed-door meetings without a court reporter or proper public notice. Peter Winders, attorney for the tax district, said the lawsuit was moot because the group has

since enacted stricter closed-meeting guidelines, and because the group has discussed publicly every issue that had been discussed behind closed doors. He said the group discussed pending or threatened litigation during the meetings. (6/7/00)

State finds no evidence clerk violated Sunshine Law

WEST PALM BEACH – A state investigation found no evidence that a West Palm Beach county clerk violated Florida's Open Meetings Law.

The state attorney's office began an investigation in December 1999 into County Clerk Dorothy Wilken, focusing on whether Wilken circumvented the law by privately

discussing who should control a court computer system.

Wilken was part of the Justice Information Systems policy board, which voted in November to move control of the system to county commissioners. (5/25/00)

Paper's advertising suit dismissed

LIGHTHOUSE POINT – A judge dismissed a paper's case against Pompano Beach stemming from the city's choice of newspapers in which to advertise.

ADVERTISING CONTINUED

The Pompano Ledger, a weekly newspaper in Pompano Beach, sued the city of Pompano Beach after a 1996 meeting in which the city voted to allow city advertising in any newspaper that met the city's standards for advertising.

The new standards eliminated *The Ledger* from the city's list of qualified newspapers.

The Ledger sued, claiming that the city boycotted the newspaper's advertising as retaliation for the

content the paper published.

U.S. District Judge Patricia A. Seitz dismissed the case because there was no showing of discriminatory intent by the city. (4/17/00)

SAO investigating housing authority

PALM BEACH – The Palm Beach State Attorney is investigating members of a housing authority board for possible violations of Florida's Open Meetings Law.

The state attorney's office seems to be focusing on a Feb. 28 meeting in which the Palm Beach County Housing Finance Authority voted for the first time in 20 years to put legal contracts out to a public bid.

Previously, the contracts for the authority's attorneys were automatically renewed.

The state attorney's office would not comment on the investigation, but an investigator requested the tapes and minutes from the Feb. 28 meeting.

The authority is responsible for distributing tax-free bonds to developers for affordable housing projects. (6/1/00)

FIRST AMENDMENT CONTINUED

Firing activist member not a violation

MIAMI – A federal judge ruled that the Miami-Dade County Commission did not violate an advisory board member's free speech rights by firing her for her position in support of Cuban artists taking part in a local music conference.

Peggi McKinley sued the county after she was fired in September 1997 from her volunteer position on the county's film, television and print advisory board. The

county has a ban on doing business with Cuba, and McKinley advocated keeping a Cuban music symposium in Miami.

U.S. District Judge James King dismissed McKinley's suit because the commission had the right to fire her for disagreeing publicly with its policies. King said that a member appointed to an advisory board implicitly agrees to represent the views of those who appoint them. (3/26/00)

Miami can't enforce Cuban arts ban

MIAMI – Miami-Dade may not force arts groups to promise they have had no dealing with the Cuban government or a Cuban national as a condition for receiving arts funding, according to a federal judge.

Miami-Dade enacted an ordinance four years ago preventing arts groups from receiving funding if they have had any

Cuban business dealings. Arts groups challenged the constitutionality of the ban in April, claiming that it blocks them from presenting Cuban artists. While the challenge is being heard by the courts, U.S. District Judge Frederico Moreno ruled that the county cannot continue to bar groups with Cuban connections from seeking grants. (5/6/00)

DECISIONS ON FILE

Copies of case opinions, attorney general opinions, or legislation reported in any issue as on file may be obtained upon request from the Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

Five Lake Park officials win libel suit against residents

WEST PALM BEACH—A jury ruled that letters and comments from two residents regarding town officials were libelous.

The jury found that H. Don Saunders and his wife Roselyn were liable for accusations

of bribery and extortion against the town's manager, mayor, vice mayor, police chief and fire chief. H. Don Saunders distributed leaflets door-to-door listing the accusations. Roselyn Saunders was liable for

communicating the accusations verbally.

The jury awarded \$500 to each of the five men libeled. The money will go to the town, which is expected to pay more than \$10,000 in legal fees for the officials. (4/8/00)

Doctor fits definition of public figure, suit thrown out

WEST PALM BEACH—A circuit judge threw out a libel suit after determining the plaintiff, a plastic surgeon, fit the definition of a public figure.

Dr. Schuyler Metlis filed a libel suit against radio talk show personality Randi

Rhodes after Rhodes criticized Metlis on air.

Circuit Judge Catherine Brunson determined that Metlis was a public figure because he agreed to be interviewed by *The Palm Beach Post* for a feature article about plastic surgery in 1995. Rhodes' on-air

comments were a result of the article.

Brunson's determination raised Metlis' burden of proof in the case. Brunson held that Metlis did not prove that Rhodes' remarks were defamatory. (4/8/00)

PRIVACY

Group complains that photos invade probationers' privacy

ST. PETERSBURG—A non-profit group is suing the Department of Corrections claiming that posting probationers' photos online is an invasion of privacy.

The plaintiff, Freedom for Life, helps convicts re-enter society. The group claims

that its clients have lost jobs after employers discover their photos on the departments Web site. Since January, the Department of Corrections has posted at <http://www.dc.state.fl.us/photos>, criminal histories and home addresses of about

200,000 people who are in prison or on probation. On the Web site, the Department of Corrections explains that the information is provided in the interests of public safety. The site offers a search engine to find prisoners or probationers in specific locations or who have been convicted of specific crimes. The site not only shows photos, but gives the convict's current location, verified address and prison sentence history.

Freedom for Life is seeking class-action status on behalf of thousands of probationers in Florida. (4/15/00)

REPORTERS PRIVILEGE

Reporter does not have to reveal source

BARTOW—A reporter does not have to reveal his source to law enforcement officials, according to a circuit judge.

Circuit Judge Cecelia Moore held that the officials showed no compelling need for the reporter's source.

Law enforcement officers from the Polk County Sheriff's office and two other law enforcement agencies attempted to find a *The (Lakeland) Ledger* reporter's source for a document he used to write a story.

Officers also accused the reporter of interfering with a murder investigation during a dispute over police records.

Sam Cardinale wrote an article in March 1999 about a police officer's unsolved shooting death 18 years ago.

In his article, Cardinale said that informants told investigators the name of the man responsible for the officer's death. Law enforcement officials wanted to know

where Cardinale got the information about the potential suspect.

Officials contended that he may have used a report prepared by the Frostproof Police Department and the Florida Department of Law Enforcement for prosecutors in 1996. The report summarized the investigation. Only four copies of the report were made and none is missing.

Law enforcement called for Cardinale to reveal his source for the document is part of an ongoing records dispute. In May 1999, *The Ledger* sued the law enforcement agencies to obtain access to records pertaining to the investigation of the police officer's death. The law enforcement agencies filed a countersuit claiming that the records are part of an ongoing investigation, and therefore not open to the public. The agencies wanted Cardinale to reveal his source as a part of the countersuit. (5/16/00)

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Experts offer tips for getting public records

Looking for a great story? Check out your local public records.

There's a wealth of information there and it's basically free for the asking. Sometimes, though, public records custodians don't make it easy to get these records. As director of the Brechner Center for

The Back Page

By Sandra F. Chance

Freedom of Information, I get a lot of phone calls from journalists asking for help in getting the records they don't want you to have.

Here's some helpful

information from the state's leading experts and media attorneys, presented at the recent Florida Bar's media law conference, on getting these often elusive, very valuable records.

Know the government-in-the-sunshine laws and your rights under them. Often, custodians will say the record you want is not a public record. Your best response is to know the law and the exemptions. Get a copy of Florida's *Government-in-the-Sunshine Manual*, written by Florida's Attorney General's office. It's available from the Florida First Amendment Foundation (<http://floridafaf.org/>). It's also available online at <http://legal.firn.edu/sunshine/index.html>.

Be assertive, aggressive when necessary, and firm. Don't take the first "no" for the final answer, counsels one reporter. Remind public officials that you have a constitutional and statutory right to public records and that public officials are obligated under those laws to provide the records within a reasonable amount of time.

Be polite. You can be firm, assertive and polite. One former reporter insists that by getting to know the records custodians and treating them like human beings, she got the records she needed when she asked and often beat her competition to the story.

Make "practice" public records requests. This is especially helpful if you're dealing with an agency not familiar with the public records law, according to one media lawyer. By requesting a record that you don't need under a deadline, you'll get the agency in the habit of dealing with you. You can also discuss the process for dealing with emergencies ahead of time.

Have a comprehensive form letter for your request on your word processor and use it. The law does not require you to put your

request in writing, but if the custodian is being difficult, it is often helpful to start a paper trail. A sample letter is available at the Brechner Center's web site at <http://www.jou.ufl.edu/brechner/foiareq.htm>.

The burden is on the public agency to explain why it is denying access to the public record. Make the agency explain its denial in writing. The public records law requires them to explain, "with particularity," why they are denying the record. This information will be helpful if you wind up having to sue them. Also, another media lawyer recommends citing people as copied who might "influence" the agency to be more cooperative.

File a complaint with the your circuit's state attorney or request mediation through the Attorney General's office. Under the law, the state attorney has the power to investigate and prosecute both criminal and noncriminal violations of the public records law. The informal voluntary mediation program has been very effective.

Write a news story about the denial. If you can't get the record or you're getting the runaround, write about it. Broadcasters should be sure to take a cameraperson with you and get the denial on video. It makes a great story.

Don't be dissuaded by exorbitant amount of additional fees. Often these fees can be negotiated. Ask for a breakdown of the fees. Ask about alternative formats, including computer downloads.

Be as specific as you can. When drafting your request, try not to be too general. Although a general request is often necessary, an overly broad request will give a custodian the perfect excuse for taking an eternity to get your documents together.

Don't make the request unless you are prepared to make them give up the documents. Lack of follow-through breeds contempt for you, your news organization and other journalists, according to one lawyer.

Finally, become conversant with new technology. Realize that more and more records are being stored on computers. Learn everything you can about computers or make friends with the techno wizards in your organization. Also, call the agency's computer person and ask for that person's assistance. In most cases, you're entitled to the database, not just parts of it. But, you have to know what to ask for.

Sandra Chance is the director of the Brechner Center for Freedom of Information at the University of Florida.