
THE BRECHNER REPORT

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Hospital indicted on Sunshine, records charges

OCALA – A grand jury indicted a hospital, saying officials violated the Public Records and Open Meetings laws.

Munroe Regional Health Systems Inc., a publicly owned hospital that is leased to a private operator by Marion County, is accused of two misdemeanors.

The charges stem from the hospital's search for a new CEO. The first

count of the indictment alleges Munroe failed to provide public records – a list of CEO candidates – to the *Ocala Star-Banner*. The criminal violation carries up to a \$1,000 fine.

The second count alleges Munroe's CEO selection committee held at least one improperly closed meeting between May 23 and July 13. The charge

carries up to a \$500 fine.

"In this case evasive devices were repeatedly used in an attempt to frustrate the purposes of both the Public Records and Sunshine Laws," the grand jury wrote.

Individual board members were not charged. "[The board members] served as unpaid volunteers and, we believe, acted in what they felt was the best interest of the hospital," the grand jury said.

ACCESS MEETINGS

Paper claims election laws violate rights

WAKULLA COUNTY – The *Wakulla Independent Reporter* is challenging the Florida Election Commission's designation of the publication as an "electioneering communication" subject to fines if it publishes again.

The Tallahassee chapter of the ACLU filed the suit on behalf of publisher and editor Julia Hanway.

Hanway alleges her publication is protected by the First Amendment and should not be subject to Florida election laws.

Three issues of the *Independent Reporter* were published between October 2004 and May 2005. In July 2005, the FEC issued a report finding Hanway had not willfully violated election laws, but put her on notice that the *Independent Reporter* was considered an "electioneering communication."

Electioneering communications are subject to fines for failing to register or report expenditures.

"Newspapers endorse candidates all the time, so even if the *Wakulla Independent Reporter* has a particular editorial slant – that does not constitute electioneering," said Robert Rivas, cooperating attorney for the ACLU.

Court sanctions attorneys for brief

JACKSONVILLE – Two attorneys representing a woman in a defamation lawsuit face sanctions for filing a frivolous appeal and using inappropriate language in their brief and during oral argument.

Judges for the 1st District Court of Appeal ordered attorneys

Thomas C. Powell and Roy E. Dezern to pay the opposing side's attorney's fees.

Their client, Eliza Thomas, sued two television stations for libel after they ran stories about her husband, who was on life support. The trial court granted summary

judgment for the television stations.

In their appellate brief, Powell and Dezern said the trial court's ruling "disparages honest journalism by legitimizing an Internet lynch mob and

elevating porno queens to the level of supreme court judges."

Their first "point" on appeal was "Whether, as a matter of law, different dates on the calendar represent different days."

The lower court will determine the amount of the attorney's fees.

DEFAMATION

FREEDOM OF INFORMATION

CIA retreats on fee practices

WASHINGTON D.C. – The Central Intelligence Agency has abandoned its plan to charge the National Security Archive higher fees for records requests.

The Archive filed suit against the CIA last summer, challenging the agency's decision to charge additional fees based on the newsworthiness of individual requests.

In court filings and a letter to the Archive, the CIA agreed to change its policies for determining what a "representative of the news media" is. Under the Freedom of Information Act, such entities are only charged copying

fees.

A 1989 court decision ruled that the Archive, a non-governmental research institute located at George Washington University, was a representative of the news media.

But in October 2005, the CIA stopped treating the Archive as a news media representative and began assessing higher fees.

"This whole dispute shows how easy it is for agencies to harass the news media when they want to and how it can delay a FOIA request," said Meredith Fuchs, the Archive's general counsel.

FIRST AMENDMENT

Police trash urban magazine at anti-gang rally

FORT PIERCE – The publisher of a local magazine is upset after police threw copies of her first issue in the trash during an anti-gang rally.

Fort Pierce police say the 29-page magazine contained photos of youths exhibiting gang hand gestures and wearing gang colors.

Urban Village magazine's editor, Jahnisha Oliver, is a substitute teacher who did not agree with the police

department's reaction. She said the photos in question featured her students and were taken at locations away from school.

Capt. Gregory Kirk wrote in an inter-office memo that when no one identified who was distributing the magazine, he "announced to the crowd that the literature was inappropriate for an anti-gang event and that the magazines would be collected by...officers or thrown in the

garbage."

Oliver, who is black, has filed a complaint with the St. Lucie County chapter of the NAACP.

"The police department is calling our children gang members and I don't appreciate that one bit," Oliver said.

"Even if they are, there should be something available helping them out of that situation instead of labeling them," Oliver said.

ACCESS RECORDS

Attorney general approves "innovative" records release

PANAMA CITY – The city was in compliance with the Public Records Law when it posted documents on a Web page and gave the requester a password to view them, according to an advisory opinion by Attorney General Charlie Crist.

The publisher of *The Bay Times Journal* requested all correspondence concerning Panama City Mayor Lauren DeGeorge since she began her term in May 2005.

Mike Harding paid \$360 for the 12 hours it took the city to create the site.

DeGeorge requested the ruling from the attorney general, questioning the city's response to the records request. DeGeorge was concerned that the Web site would not be affordable to average citizens.

Harding's request involved thousands of pages of documents.

Crist called the city's method of releasing the records "innovative."

County dispute leads to arrest of fire chief

ISLES OF CAPRI – Fire Chief Emilio Rodriguez pleaded no contest to a criminal charge of failing to keep records as a public officer.

Rodriguez was sentenced to 50 hours of community service for the misdemeanor, according to the *Naples Daily News*.

The charge is a result of a \$16,850 check that Rodriguez deposited into an account for the fire department's volunteer organization, a private entity, instead of the fire department.

A sheriff's investigator determined that the money was used to purchase materials for the fire department.

The incident came to light as a result of inquiries by Collier County Clerk Dwight Brock.

Brock is involved in a legal dispute with the county over instances where money due to the county has passed through non-governmental accounts.

Brock's office has spent almost \$640,000 in legal fees over the past two years.

Former city official sues city for public records, loses on appeal

PLANTATION – A former councilman who sued the city for allegedly violating the Public Records Law lost his appeal.

Lee Hillier initiated the suit against the city of Plantation and Mayor Rae Carole Armstrong in 2002.

The 4th District Court of Appeal ruled that Hillier's records requests were

complied with, based on testimony of city witnesses.

"Faced with conflicting evidence, the trial court chose to believe the city's witnesses," the court ruled. "This is merely a credibility determination."

Hillier requested records related to building issues and government spending.

ACCESS COURTS

Newspapers win access to recording of "trial"

TAMPA – An audio recording of a beating during a gang "trial" was released to the media after *The Tampa Tribune* and *St. Petersburg Times* fought for access to the tape. The audio from a hidden camera is part of the case against Michael Victor

Lugo, 28, accused of kidnapping and beating a fellow gang member. There are no video images of the beating.

The incident occurred after a May 20 "trial" during which the fellow member was accused of causing problems within

the organization.

Lugo's defense attorney objected to the release of the recording, but Circuit Judge Daniel Sleet ruled that the release wouldn't hurt Lugo's chance at a fair trial, according to *The Tampa Tribune*.

Judge places Sunshine recall election on hold

OCALA – Residents of McIntosh must redraw their petition asking for an election to recall Councilman James Strange, a circuit judge ruled.

Chief Circuit Judge Victor Musleh ruled that the petition was too vague, according to the *Ocala Star-Banner*. The petitioners will be allowed to provide more specific examples.

The recall effort was prompted in response to allegations that Strange violated the Sunshine Law.

According to the petition, Strange requested “all present to swear that nothing discussed in the meeting would be divulged outside the meeting room” at a Feb. 25 meeting.

Strange maintains that his statement was “an attempt at humor,” according to the *Star-Banner*.

The petition also alleged the council called emergency meetings that were not actual emergencies and discussed issues outside of public meetings. Strange also denies those allegations.

Two other council members, Joe Phillips and Danaya Wright, were also accused of allegations related to the emergency meetings, according to the *Star-Banner*. They have resigned their positions.

Governor orders probe of Tampa expressway agency

TAMPA – The Tampa-Hillsborough County Expressway Authority rescinded a contract for legal services following an inquiry ordered by Gov. Jeb Bush.

The board had previously offered the contract to the law firm GrayRobinson.

That offer was scrutinized after the authority’s legal affairs director, Mary Hall, alleged Sunshine Law violations related to the contract.

Hall’s allegations stemmed from

a meeting between the law firm and the authority’s lobbyist and a meeting between the firm and the authority’s executive director.

Gov. Bush’s general counsel, Raquel Rodriguez, investigated the matter and ruled that no laws had been broken.

But Gov. Bush still expressed concern with the handling of the bid. He said the contract “ought to be thrown out,” according to *The Tampa Tribune*.

Gov. Bush also requested a state audit of the authority’s finances.

Non-voting commissioner won’t be penalized for violating law

WAKULLA COUNTY – A county commissioner violated state law when he declined to vote during an emergency meeting, according to State Attorney Willie Meggs.

Florida law requires commissioners to vote unless they have a conflict of interest.

But Wakulla County Commissioner Howard Kessler won’t be penalized for the May 4 violation because no penalty was established by the legislature,

Meggs wrote in a letter to Gov. Jeb Bush.

Commissioners voted to fire the county administrator at the emergency meeting.

Kessler attended the emergency meeting but declined to vote because he felt the community did not receive adequate notice of the meeting.

Kessler also said the subject matter was not appropriate for an emergency meeting, according to the *Tallahassee Democrat*.

Meggs concluded that the meeting was properly advertised.

FIRST AMENDMENT

College pulls student newspaper from racks after president objects

ST. AUGUSTINE – Copies of the student newspaper for a private college were pulled from the stands after the president objected to an article’s headline and sub-headline.

The *Gargoyle* is the student newspaper for Flagler College. College President William Abare gave an interview to journalism student Kimberly Hosey, who wrote the article accompanying the reportedly inaccurate headlines.

Hosey’s story was about the school’s finances and an expected tuition increase. The headline read “Campus

Growth Forces Tuition Hike.” College spokesperson and *Gargoyle* faculty adviser Brian Thompson said the college’s trustees have not voted yet on a tuition increase.

The sub-headline said it was the first time the school had been in debt. Flagler College had been in debt before, Thompson said.

Abare will allow the *Gargoyle* to re-print the issue if the headline and sub-headline are corrected, Thompson said.

“I understand because this is a private college, [Abare] has the right to do this,” Hosey said. “However, it might not have been a rational choice to make at the time.”

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Jury rejects false light claim by Tampa police officer

In September, a panel of six Hillsborough County jurors returned a verdict in favor of WFTS-TV and reporter Mike Mason, finding they did not portray a Tampa police officer in a false light (*Luszczynski v. Tampa Bay Television, et al.*).

Three separate lawsuits were brought against WFTS, Tampa Bay Television, Inc.'s ABC affiliated station, in December 2003 by three Tampa Police Department officers. The officers had been featured in news reports concerning problems with the promotions process at the agency.

All three plaintiffs were identified in the broadcasts as officers who had engaged in misconduct and received discipline but were later promoted. Each of the officers brought claims for

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defamation and false light invasion of privacy, claiming the broadcasts were structured to falsely imply that they were corrupt cops, lacking in integrity and smarts, who had been

promoted based upon favoritism or a good ol' boy system rather than merit.

Earlier this year, officer Paul Luszczynski dismissed his defamation claims. On September 5, 2006 Luszczynski's false light case was the first of the three to go to trial. Luszczynski had been featured in the broadcasts as an example of an officer who had misbehaved, was disciplined, and then later promoted after an incident during which he head-butted a federal agent in a bar during a work-related argument.

Though Luszczynski admitted that the details of the incident were true, he alleged that WFTS and Mason structured the stories to suggest that statements made by three on-air sources (a retired deputy chief, a fellow officer and a new chief of police) specifically referred to Luszczynski and created the false impression that he was a corrupt cop who was promoted because of friendship or favoritism.

To prove false light in Florida, a plaintiff must prove that he was cast in a false light that is highly offensive to a reasonable person in the plaintiff's position, that the defendants acted with actual malice, and damages. The jury took about two hours to



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reach its verdict, finding that Luszczynski had not been cast in a false light and proceeding no further with the verdict form as it related to the remaining elements of the tort.

Luszczynski will not appeal the jury's verdict. The remaining two plaintiffs have dismissed their lawsuits against WFTS and Mason.

Basing false light claims upon the publication of truthful information is a relatively recent phenomenon in Florida due in large part to the Second District Court of Appeal's 2001 holding in *Heekin v. CBS*

Broadcasting, Inc. that a cause of action for false light invasion of privacy could exist "when the facts published are completely true."

Luszczynski's claims were brought in Hillsborough County, a circuit bound by the *Heekin* decision. The defendants in *Heekin* ultimately prevailed on single action rule grounds (which was affirmed in 2004 by the Second District without opinion).

Heekin has sparked a rash of false light claims in Florida courts that are based on publication of truthful information. False light is an attractive alternative to defamation for plaintiffs because of its four-year statute of limitations (defamation claims must be brought within two years) and because of the uncertain status of constitutional privileges and defenses available in defamation actions.

But in *Gannett Co., Inc. v. Anderson*, the First District Court of Appeal recently reversed an \$18 million verdict against Gannett and its co-defendants. The First District held that Anderson's claim was not materially distinguishable from a defamation claim and therefore was subject to the two-year statute of limitations. Anderson's lawyers had argued that the four-year statute of limitations for unspecified torts applied to the claim. The court certified the statute of limitations question as in conflict with *Heekin* and one of great public importance.

Deanna K. Shullman is an associate at the law firm Thomas & LoCicero PL. She, along with partners Gregg D. Thomas and Rachel E. Fugate, represented defendants Tampa Bay Television, Inc. and Mike Mason in this matter. Mark Herdman, of Herdman & Sakellarides in Clearwater, represented Luszczynski.