Fall 2012

The Voice

OF THE FLORIDA BAR GOVERNMENT LAWYER SECTION

Word from the Chair

Your Voice

By Diana K. Bock, Chair, Government Lawyer Section, 2012-2013

DIANA BOCK

In May of this year, President Scott Hawkins for the first time, as a result of the continued work of the Government Lawyer Section of The Florida Bar, created a non-voting seat on the Board of Governors for a government lawyer. This type of non-voting seat is permitted through the by-laws of the Board at the discretion of the President of The Florida Bar each year. In June, President Gwynne Young reaffirmed the creation of the seat on the Board for 2012-2013 and appointed Ward Griffin, immediate past chair of the Government Lawyer Section, as the representative of the government lawyers of the Bar.

This publication was named "The Voice" because the Executive Council of the Section believed it reflected the purpose of this Section; to provide a voice for government lawyers to the Bar. So many, the majority in fact, of government lawyers are not able to sustain the financial impact that running for a seat on the Board of Governors requires in addition to the cost of attending meetings held all over the State, including one out-of-state meeting each year. This appointment is a monumental step forward for the recognition of government lawyers, the unique practice problems they face and a more balanced representation within the dynamic of the Bar's membership. We are extremely grateful to Presidents Hawkins and Young for the opportunity to have our voice heard and look forward to building a strong foundation of communication within the Bar.

Over the next several months this Section will be exploring options to assist the appointed government lawyer representatives on a long-range basis; developing and implementing continuing legal education programs that are timely and pertinent to the practice areas of our members; sustain and enhance our State and Federal Government and Administrative Practice certification program; build our membership; and address the unique on-going concerns faced by those in government service.

In order to best serve our membership we need to hear from you; we need to be made aware of special concerns you face in your practice as a government lawyer. I would encourage you to contact Executive Council members directly; there is a listing of all Executive Council members and their contact information in this publication for just that purpose. You

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THE FLORIDA BAR

THE GOVERNMENT LAWYER SECTION REPORTER

Francine M. Ffolkes, Editor

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MESSAGE FROM THE CHAIR

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can also visit our website at www.flgovlawyer.org to learn more information about what is happening in the Section.

It is an honor and a privilege to serve as Chair of the Government Lawyer Section this year and I look forward to hearing from you about how we can make our Section stronger and best serve the needs of our members.

Diana K. Bock *is an Assistant Attorney General, practicing in the Criminal Appellate Division of the Attorney General's Office. She is active with the Bar and, in addition to being Chair of the Government Lawyer Section, was appointed to the Bar's Standing Committee on Professionalism. She is also Board Certified in State & Federal Government and Administrative Practice.*

UPCOMING MEETINGS & EVENTS

Government Lawyer Section
Executive Council Meeting

Thursday, October 18, 2012 — 3:30 p.m. (Telephonic)
Thursday, December 13, 2012 — 3:30 p.m. (Telephonic)

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UPCOMING CLEs

November 7-8 — **The 2012 Pat Dore Administrative Law Conference (Course #1430)**

Course Classification: Intermediate Level

LIVE PRESENTATION AND WEBCAST

November 7 - 8, 2012
University Center Club, Florida State University
Tallahassee, FL 32306

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

Michael Alderman Wins Florida Bar's Claude Pepper Outstanding Government Lawyer Award

By Morgan Roger Rood, Esq.

Ward Griffin, GLS Chair 2011-12; Morgan Rood; Michael Alderman; Florida Bar President Gwynne Young, Florida Bar Past President Scott Hawkins

The Government Lawyer Section of The Florida Bar announced at the Annual Meeting that Michael J. Alderman, Esquire, Deputy General Counsel with the Florida Department of Highway Safety and Motor Vehicles, is the recipient of The Florida Bar's Claude Pepper Outstanding Government Lawyer Award for 2012. Mr. Alderman was nominated by his colleagues at DHSMV; Executive Director Julie Jones, General Counsel Stephen D. Hurm, and Senior Assistant General Counsel Judson M. Chapman.

A practicing government lawyer for 34 years, Mr. Alderman has served in increasingly responsible legal positions with DHSMV from 1978 to the present time. That span includes the administrations of seven Governors of Florida and eight Executive Directors of the DHSMV. Mr. Alderman is considered one of the most knowledgeable attorneys in Florida and the United States in legal issues arising from the licensing of motor vehicles, their operators, manufacturers and dealers.

In addition to supervising numerous DHSMV attorneys around the state and supporting the General Counsel in providing legal advice to the Executive Director, Mr. Alderman's duties include representing DHSMV in administrative litigation before DOAH and PERC and in civil litigation in state and federal courts. He also provides legal advice and legal opinions to the Division of Motor Vehicles, Division of Florida Highway Patrol, Division of Driver Licenses and the agency's Information Systems Administrator, among other responsibilities.

Mr. Alderman has received certification from The Florida Bar in the areas of State and Federal Government and Administrative Practice, and Appellate Practice. He is actively involved in the American Association of Motor Vehicle Administrators and the Florida Association of Police Attorneys.

The purpose of the Claude Pepper Outstanding Government Lawyer Award is to recognize an outstanding lawyer who has made an extraordinary and exemplary contribution as a practicing government lawyer, and one who exemplifies the highest ideals of dedication, professionalism and ethics in service to the public. Claude Pepper Award recipients are not only excellent lawyers, but excellent citizens. The Claude Pepper Award selection committee and Florida Bar President Scott G. Hawkins, found Mr. Alderman's candidacy to be outstanding in every respect, and congratulate him on earning this statewide recognition and honor.

This article was contributed by Morgan Roger Rood, Esq., Chair, Claude Pepper Outstanding Government Lawyer Award Committee of The Florida Bar Government Lawyer Section, Ward P. Griffin, Esq., Chair

Remarks of Michael J. Alderman
Upon Acceptance of the Claude Pepper Outstanding Government Lawyer Award
June 22, 2012

First of all, I want to thank the Florida Bar for bestowing this signal honor upon me. Knowing, as I do, the competence and dedication of my fellow lawyers who serve in all levels of government, and sensible of my own modest contributions, I accept this award on behalf of all attorneys in government service, who rarely receive the accolades they deserve.

Government lawyers play a unique and vital role in our system of liberty under law. The government lawyer is not only a counselor, but a guardian and conscience as well. The government lawyer is the counselor who advises his agency so that the laws will be faithfully executed. The government lawyer is the guardian of the principle that in our country, it is law, and not man, that rules. Finally, and most importantly, government lawyer is the conscience of his agency, urging that justice be done. This requires not only a thorough knowledge of the relevant constitutional and statutory provisions and judicial precedents, but a deep understanding of their underlying moral principles.

I propose two models for the role of government lawyer. The first is Claude Pepper, the conscience of Congress, who always called upon his colleagues to do the right thing regardless of the political consequences. The second is the saint of the Catholic Church whose feast day is today, Saint Thomas More. Saint Thomas More was a government lawyer and statesman who became chancellor of England under Henry VIII. Rather than violate his conscience by swearing the oath required by the Act of Supremacy, he allowed himself to be put to death.

My fellow government lawyers, be counselors, guardians and consciences regardless of the consequences to yourself. In this way you will be true to the high calling of government lawyer. And so, once again, thank you, and to my fellow government lawyers, thank you for your selfless service. Counselors, guardians, consciences, I salute you!

GLS Renews Legislative Positions for 2012-2014

At the July meeting of The Florida Bar Board of Governors, the Board did not object to five positions by the Government Lawyer Section. The GLS renewed five positions for the 2012-2014 biennium.

Government Lawyer Section:

1. Supports language in the Legislative Appropriations Act to permit the payment of government attorneys' Florida Bar membership fees and continuing legal education costs from funds within budget entities, and further supports amendment to general law to authorize all Florida government agencies to pay their government attorneys' Florida Bar membership fees and continuing education costs.
2. Supports amendment to §119.07(3)(x), Florida Statutes, to exempt from disclosure under the public records law, the home addresses and telephone numbers of all current and former government agency employees.
3. Supports full legislative funding of the Prosecutor/Public Defender Training Program.
4. Supports legislative intent language to clarify that statutory restrictions or prohibitions on the private practice of law by government lawyers (other than judges and their staff) do not preclude such lawyers from providing pro bono legal services as contemplated by the Supreme Court of Florida in *Amendments to Rules Regulating The Florida Bar*, 630 So. 2d 501 (Fla. 1993), which establishes an aspirational goal of 20 hours per year of such services by each Florida lawyer.
5. Oppose all efforts to reduce the salaries and currently authorized benefits, including any change to the Florida Retirement System that would result in reduced benefits, for government lawyers.

The master list of legislative positions for The Florida Bar, sections and committees is available at Master List.

Case Law Update

By Betsy Stupski, Office of the Attorney General
(further edited by Francine M. Ffolkes).

United States Supreme Court

Filarsky v. Delia, 132 S. Ct. 1657 (2012).

The Fire Chief of Rialto California suspected that an employee who was on extended sick leave was actually using the time to work on home improvement projects. There was evidence that he had bought a large amount of building supplies during the sick leave period. The Fire Chief hired an attorney from the private sector to assist with an internal investigation. The private attorney recommended that the Fire Department ask to inspect the employee's home or that he be required to produce the supplies to demonstrate that they were yet unused. The employee refused to allow the Department into his home but eventually brought the supplies out into his yard for inspection, proving that he had not used them on a home improvement project during his sick leave. The employee later filed a § 1983 action against several individuals including the private sector attorney. He complained that they had conducted an unreasonable search and seizure.

The question before the United State Supreme Court was whether a private sector attorney "hired by the government to do its work is prohibited from seeking absolute or qualified immunity, solely because he works for the government on something other than a permanent or full-time basis." The Court determined the private attorney was entitled to seek qualified immunity.

National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012).

The United State Supreme Court determined that while Congress could not compel individuals to purchase health insurance under the Commerce Clause, Congress could compel individuals to purchase health insurance pursuant to congressional taxing authority. The Court also determined that Congress could not withhold funding to states for failing to participate in the Medicaid expansion provisions of the Patient Protection and Affordable Care Act.

Eleventh Circuit Court of Appeals

Butler v. Sheriff of Palm Beach County, 685 F. 3d 1261 (11th Cir. 2012).

The Court used a Jim Croce song to introduce the facts in this case. His conclusion from the song was that you do not mess around with certain people. In this case a teenage girl invited her teenage boyfriend to her house while her parents were away. The two were interrupted when the girl's mother (who happened to be a correctional officer in uniform and carrying a gun) came home. The mom surmised what was going on and discovered the young man in the closet. She drew her gun on him, punched him, threatened him and yelled at him. Eventually the young man brought a §1983 suit against the mother/correctional officer for excessive force. The district court dismissed his claim. After analyzing the facts, the court concluded that while the young man may have been treated "badder than ole King Kong" and "meaner than a junkyard dog", the mother/correctional officer was not acting under the color of law so the district court correctly dismissed the §1983 claim.

Lloyd v. Benton, 686 F. 3d 1225 (11th Cir. 2012).

Lloyd brought a civil rights action in Florida state court. The Defendants properly moved for removal to federal court for subject matter jurisdiction. The federal action, however, was subject to the "three strikes rule" of the Prison Litigation Reform Act (PLRA). In other words the Plaintiff was precluded from bringing another federal action because he had filed at least three frivolous federal lawsuits in the past. The Defendants requested that the court order Lloyd to post a $350 bond pursuant to the PLRA. The Plaintiff countered that the case should be remanded back to state court. The district court chose to remand the case back to state court.

The Defendants appealed, arguing that the district court should not have remanded the case back to state court because the removal to federal court was proper. The Eleventh Circuit agreed with the Defendants/Appellants. The court stated, "Because we conclude that the district court had federal question jurisdiction and Appellants properly removed Lloyd's case to the Middle District of Florida, we hold that the district court lacked legal authority to remand the case to Florida … Accordingly, we vacate the district court's order remanding Lloyd's civil action to state court and remand this case to the district court for further proceedings consistent with this opinion."

American Civil Liberties Union of Florida, Inc. v. Dixie County, Fla., --F. 3d --, 2012 WL 3322657 (11th Cir. 2012).

The ACLU brought suit against Dixie County on behalf of a citizen alleging that he was offended and injured by a five-foot statue of the Ten Commandments at the courthouse. He signed an affidavit saying that he would not be able to buy property in the County because he was so offended by the statue. Both the County

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and the Plaintiff moved for summary judgment. The district court granted summary judgment to the ACLU. The Eleventh Circuit reversed, stating that standing was at issue because questions of fact remained regarding the veracity of the citizen's affidavit. The Court pointed to a deposition where the citizen had indicated that there were other reasons for not buying property in Dixie County. The Court said, "If an affidavit differs from the statements made in a deposition, "the two in conjunction may disclose an issue of credibility. Under such circumstances, a district court is not free to credit one piece of evidence and ignore the other; instead, it should hold an evidentiary hearing in order to make credibility findings… We find that such an issue of credibility exists regarding Doe's inconsistent testimony. Yet when the district court ruled on the ACLU's motion, it made a final disposition of the case that implicitly relied on crediting the affidavit and ignoring the deposition testimony that "other things" may have deterred Doe from pursuing his property search. Ignoring that deposition testimony was improper; the district court lacked the power to make a credibility determination absent a prior evidentiary hearing." The Court went on to say," Doe's affidavit—which is suspect, given that it seems designed to strengthen Doe's standing claim—is inconsistent with his deposition. Because this conflicting evidence must be resolved in order to determine whether Doe has standing, we vacate the district court's grant of summary judgment on the merits and remand to the district court to hold an evidentiary hearing and determine what testimony to credit."

First District Court of Appeal

Florida House of Representatives v. Expedia, 85 So. 3d 517 (Fla. 1st DCA 2012).

Expedia and other companies were involved in tax litigation in Georgia, where they turned over some confidential documents during discovery. Later the companies became involved in litigation in Florida with some Florida counties. The confidential documents eventually found their way to the Florida Legislature. Expedia sought to depose a legislator in order to determine how he got the documents. The trial court permitted the deposition but limited the nature of the questions.

The First District reversed finding that a legislative privilege existed. The Court said, "A legislative privilege existed under the common law, and we conclude that it continues to apply in Florida by general legislation adopting the common law. We also conclude that a legislative privilege is implicit in the separation of powers provision of the Florida Constitution. Because the testimony to be given in this case is within the scope of the privilege, we hold that the subpoenas at issue must be quashed."

Environmental Turf, Inc v. University of Florida Trustees, 83 So. 3d 1012 (Fla. 1st DCA 2012).

Environmental Turf submitted a public records request to the University of Florida. The University would not disclose the records, claiming that they were exempt from disclosure. The trial court found in favor of the University.

The First District affirmed that some of the records were exempt because they were prepared by a direct-support organization pursuant to section 1004.25, Florida Statutes. As to the other records being sought, the First District found that the trial court should have conducted an in camera inspection to determine whether an exemption applied.

Decker v. University of West Florida, 85 So. 3d 571 (Fla. 1st DCA 20120).

Decker was found guilty of cheating by a University panel. He appealed to the provost who affirmed the decision of the panel. Decker then appealed to the First District.

The First District found that the University was not acting as an administrative agency but instead was acting pursuant to the authority granted in Article IX section 7 of the Florida Constitution. The Court said, "… when an officer or agency is exercising power derived from the constitution, the resulting decision is not one that is made by an agency as defined by the Administrative Procedure Act." As a result, the appropriate remedy for Decker would have been to petition the circuit court for certiorari.

Bondi v. Tucker, --So. 3d--, 2012 WL 3000644 (Fla. 1st DCA 2012).

The Attorney General's Office defended the Department of Corrections in a challenge to a proviso to the General Appropriations Act. The trial court declared unconstitutional the proviso which provided for the privatization of prisons. Although the Department of Correction did not appeal, the Attorney General filed a notice of appeal on her own behalf pursuant to her powers as Attorney General. The Court determined, as a matter of procedure, that the Attorney General could not file a notice of appeal because she was not a party in the trial court proceedings and had not taken steps to intervene.

Rhea v. District Board of Trustees of Santa Fe College, --So. 3d--, 2012 WL 2924068 (Fla. 1st DCA 2012).

Plaintiff, a professor, brought an action for a public records violation against Santa Fe Community College. He sought the disclosure of a student e-mail to the College in which the student criticized him. The College gave him a copy of the e-mail with the student's name redacted. The trial court determined that the e-mail in its unredacted form qualified as an educational record and was therefore exempt from disclosure.

The First District reversed stating, "We conclude that the applicable statutes and related case law demonstrate the unredacted e-mail is not an education record, because it is not directly related to a student. Instead, it is directly related to an instructor

and only tangentially related to a student. Therefore, we reverse that part of the order dismissing Count One and remand for further proceedings."

Robinson v. Department of Health, 89 So. 3d 1079 (Fla. 1st DCA 2012).

Robinson was terminated from the Department of Health. Sometime afterward she filed a whistle-blower complaint with the Florida Commission on Human Relations (FCHR). FCHR dismissed her complaint as untimely and advised her of her right to appeal. Instead of filing an appeal, Robinson filed a new whistle-blower action in circuit court. DOH moved for summary judgment and prevailed.

The First District affirmed the circuit court. The Court held, "To maintain a civil action under the Whistleblower's Act, a public employee must first exhaust the administrative remedies provided therein... As a general rule, exhaustion of administrative remedies includes pursuing an appeal from an administrative ruling where a method of appeal is available."

University of Florida Board of Trustees v. Stone ex rel. Stone, 92 So.3d 264 (Fla. 1st DCA 2012).

Stone was admitted to a Starke hospital because he was suffering stomach pain. While he was there, the surgical staff determined that he may need surgery. They made a decision to transfer him to Alachua General Hospital which was a better facility to conduct the surgery. Several hours after he was transferred to Alachua General Hospital, Stone went into cardiac arrest and died. Stone's wife brought a wrongful death action against the University of Florida Board of Trustees and other defendants. The Defendants responded that they were protected from lawsuit by the Good Samaritan Act. The trial court found as a matter of law that the Defendants were not protected by the Good Samaritan Act.

The First District began with a careful analysis of the Good Samaritan Act and its history. The Court said, "Although couched in terms of "immunity," the GSA merely imposes a heightened standard of proof on the plaintiff in cases where the statutory prerequisites are met. The question in this case is whether the trial court correctly ruled that the prerequisites were not met and, thus, the heightened standard of proof did not apply." The Court went on to determine that the Good Samaritan Act applied for diagnosis or treatment of an emergency medical condition prior to the time a patient is stabilized. To determine whether an emergency medical condition exists, the court should have looked at both the facts and the physician's subjective view of the patient's condition at the time. In this case the evidence was conflicting as to whether Stone had been stabilized or not. As a result the First District remanded for a new trial.

Second District Court of Appeal

Quesada v. City of Tampa, --So. 3d--, 2012 WL 2614918 (Fla. 2d DCA 2012).

The Plaintiff was terminated from the Fire Rescue Department when he tested positive for steroids. After he was terminated, he filed a grievance saying he had not taken any prohibited substances but had taken only a natural over-the-counter supplement which had created a false positive. The grievance was denied and the parties went to arbitration. Both sides presented experts. Ultimately the arbitrator relied on her own Internet research that the supplement could not have created the false positive. She concluded that the Plaintiff's responses regarding steroid use must have been untruthful.

On appeal the Plaintiff argued that the arbitrator engaged in misconduct when she conducted her own independent investigation. The Second District found that the arbitrator had erred and that her error prejudiced the Plaintiff. The Court said, "Here, the arbitrator's independent research constitutes misconduct because arbitration panels should not, in the course of their deliberations, go outside the evidence presented to them." The Court found that Quesada was prejudiced by the arbitrator's misconduct because her independent research yielded information not only different from any of the evidence in the record but also damaging to Quesada's case. The Court also noted that the collective bargaining agreement did not provide that the arbitrator was free to conduct independent research. Accordingly, the circuit court's order was reversed, and the arbitrator's award vacated.

Town of Longboat Key v. Islandside Properties, --So. 3d--, 2012 WL 3705264 (Fla. 2d DCA 2012).

The circuit court quashed a town ordinance which approved a redevelopment plan. The Town then petitioned the District Court for certiorari, arguing that the circuit court had exceeded its authority by reweighing the evidence and that the circuit court should have given deference to the Town's interpretation of its Code. The Second District found that the circuit court did not reweigh the evidence. The Court said that the fact that the circuit court mentioned details from background information in its decision was not enough to establish that it had reweighed the evidence. The Court said, "The Town's argument reaches too far and would encourage a judge to omit any meaningful background information in an order lest he or she be accused of impropriety. This hardly promotes judicial transparency, sound explanation, and rational analysis. Our careful review of the record uncovers nothing suggesting that the circuit court relied on Ms. Simpson's testimony to reach its decision." The Second District went on to say that the circuit court was not required to adhere to the Town's interpretation of the Code. The Court said, "Using the Code wording, aided by dictionary definition, the circuit court discerned the meaning of the Code. No rule required adherence to the Town's self-serving interpretation. … '[W]hen the language of the statute is clear and

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unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.'"

Third District Court of Appeal

LaRue v. Kalex Construction and Development, Inc., --So. 3d--, 2012 WL 3587263 (Fla. 3d DCA 2012).

Parties were in a dispute over an oral contract. The question before the court was whether the statute of frauds applied to the contract. According to LaRue, Kalex, her employer, promised to hire her at a designated salary and then in three years give her 25% part ownership of the company. LaRue joined Kalex then later received a raise. Three years came and went without LaRue getting part ownership of the company. Eventually she was terminated. She brought an action for full performance on the contract. The trial court granted summary judgment to Kalex after finding that the contract was barred by the statute of frauds. The Third District affirmed the trial court. The Court began by noting that the doctrine of partial performance would not remove an action for the breach of an oral contract from the operation of the statutes of fraud. The Court also noted that "Full performance of an oral agreement, however, **may** remove the agreement from the statute of frauds if the agreement is capable of being performed within a year and was, in fact, performed within one year."The Court went on to determine that the parties in this case did not intend for the contract to be performed within one year nor was it susceptible of performance within one year. The Court said, "In applying these principles to the instant case, it is clear that the trial court correctly determined that LaRue's claims were barred by the statute of frauds. It is undisputed that LaRue's complaint was based on an alleged oral employment agreement, and the agreement and the intent of the parties was that LaRue would receive a 25% ownership interest in the company if she worked for the company for three years. Because the alleged agreement was incapable of being performed in one year, her claim is barred by the statute of frauds."

Moriber v. Dreiling, --So. 3d--, 2012 WL 3586750 (Fla. 3d DCA 2012).

An assistant at petitioner's law firm inadvertently emailed a confidential mediation statement to two attorneys at the opposing counsel's law firm. Only one attorney browsed the document. Since there was no verbiage designating the document as confidential, she thought the document was sent on purpose. When the petitioner's attorney realized what had happened, he immediately requested that all copies be destroyed. Opposing counsel complied immediately. Petitioner later moved to disqualify respondent's law firm from representation for gaining an unfair advantage. The matter was assigned to a special master who determined that there was nothing in the confidential mediation statement that would give the respondents an unfair advantage. As a result the respondent's law firm was not disqualified. The Third District reviewed the trial court's decision to determine whether the trial court had departed from the essential requirements of the law. The Third District found that in order for the inadvertent disclosure to warrant disqualification the petitioner would have to establish "… (1) the inadvertently disclosed information is protected, either by privilege or confidentiality; and (2) there is a 'possibility' that the receiving party has obtained an 'unfair informational advantage' as a result of the inadvertent disclosure." The court relied on the content of the mediation statement and the behavior of the attorneys before affirming the decision of the lower court.

Fourth District Court of Appeal

Althouse v. Palm Beach County Sheriff's Office, 89 So. 3d 288 (Fla. 4th DCA 2012).

Althouse made a public records request for documents concerning an ongoing homicide investigation. The Sheriff's Office claimed that the records were exempt from disclosure because they pertained to an active investigation. Althouse filed a writ of mandamus, arguing that he was entitled to redacted copies. The Sheriff's Office proposed an in camera inspection for the judge but Althouse objected to the inspection. The trial court determined that the Sheriff's Office could assert that the file as a whole was exempt. The court denied Althouse's petition.

The Fourth District said, "Usually, the trial court's failure to conduct an in camera inspection of the record would constitute reversible error... However, in this case, Althouse invited the trial court's ruling by arguing against an in camera inspection and asserting that one would not be necessary… The trial court was unable to determine what portions of the record were subject to disclosure without conducting an in camera review. Under the facts and circumstances of this case, we are compelled to affirm the trial court's ruling."

Althouse v. Palm Beach County Sheriff's Office, 92 So.3d 899 (Fla. 4th DCA 2012).

Althouse made a public records request to obtain rules and procedures regarding confidential informants. The Sheriff's Office initially responded that the requested records were exempt from disclosure. Althouse then filed an action in court to compel the Sheriff's Office to comply. The Sheriff's Office then responded by apologizing and providing the requested records. The Sheriff also offered to reimburse Althouse his filing fee and service of process costs. Althouse asserted that he had incurred costs in addition to the filing and service of process fee. The trial court summarily denied his motion for additional costs.

The Fourth District found that an entitlement to fees depends on whether the public entity had a reasonable or "good faith" belief in the soundness of its position in refusing production. The court said, ". Rather, the court's task is determining whether a party had to file a civil action against an agency to compel compliance of public records; if so, if no reasonable or good faith belief existed to withhold such documents, then the court shall assess reasonable costs of enforcement…Accordingly, we hold that the denial of an award of Althouse's fees and costs, without an evidentiary hearing to determine the reasonableness of such costs, was reversible error. The matter is remanded to the lower court with directions to set an evidentiary hearing to determine if the costs requested by Althouse were reasonably incurred and, if so, award those costs to Althouse."

Fifth District Court of Appeal

Kist v. Hubbard, --So. 3d--, 2012 WL 2864379 (Fla. 5th DCA 2012).

The Plaintiff sued Officer Hubbard, of Pinellas County Sheriff's Office, in his personal capacity in Sumter County for defamation and intentional infliction of emotional harm. Officer Hubbard moved for a transfer of venue to Pinellas County, the home county of his employer.

The issue before the Fifth District was whether the Plaintiff's complaint adequately asserted the complaint against the officer in his "personal" capacity and not his professional capacity. The Court reviewed the complaint to determine whether it identified an exception to public employee immunity. Concluding from a review of the Florida Statutes that bad faith was an exception to immunity the Court then looked at the allegations of the complaint. The court found that since malice, intent and mental attitude could be averred generally, the Plaintiff's general allegations were sufficient.

Hewlings v. Orange County, Fla., 87 So.3d 839 (Fla. 5th DCA 2012).

Hewlings made a public records request to obtain all the records relating to a dangerous dog investigation against her dog. The County acknowledged her request in a timely fashion but did not comply for at least 45 days. Hewlings then filed a mandamus petition with the trial court. The court ordered the City to produce the records for Hewlings within 48 hours which they did. After getting the records Hewlings moved for attorneys' fee. The trial court denied her request for attorney fees.

The Fifth District determined that although the County had acknowledged the request, the delay in complying justified awarding attorney fees to Hewlings.

State and Federal Government and Administrative Practice (SFGAP) Update

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

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

~Justice Harry Lee Anstead, April 2003

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

These lawyers are part of a network of specialists in The Florida Bar's certification program that is consistently recognized as a national leader among state programs. Congratulations to our new 2012 certified attorneys: Amy Schrader and Regina Keenan.

The Florida Bar celebrates thirty years of board certification. The program was approved by the Florida Supreme Court in 1982. Read more at 30th Anniversary.

II. Upcoming CLE seminars:

This year's Pat Dore Administrative Law Conference will be held in Tallahassee, Florida on November 7 and 8, 2012.

III. News from the SFGAP Certification Committee:

A. The inaugural 2007 (8/1/2007 to 7/31/2012) class of certified lawyers went through the recertification process this past summer. Congratulations to all who recertified for another five years!

B. SFGAP Certification Committee members (new members):

Allen Richard Grossman, *Chair*
Tallahassee Term: 2013

Francine Marie Ffolkes, *Vice Chair*
Tallahassee Term: 2014

Kirk Lee Burns, West Palm Beach
Term: 2013

Martha Harrell Chumbler,
Tallahassee Term: 2015

Charles Robert Fletcher, Tampa
Term: 2013

James Aaron Peters, Tallahassee
Term: 2013

Lynne Allen Quimby-Pennock,
Tallahassee Term: 2015

Ryland Terry Rigsby, Tallahassee
Term: 2015

Cathy Miller Sellers, Tallahassee
Term: 2013

IV. News and Resources for Board Certified Lawyers:

A. News from the July 2012, Issue 46, of "The Capstone" is available at *http://www.floridabar.org/tfb/TFBMember.nsf/840090c16eedaf0085256b61000928dc/b98feab0bef7391185257015006786e5?OpenDocument*

Timothy P. Atkinson of Oertel, Fernandez, Bryant & Atkinson in Tallahassee spoke to the Big Bend Chapter of the Paralegal Association of Florida Inc. on "Water Rights: Florida Consumptive Use Law." Atkinson is board certified in state and federal government and administrative practice.

Donna E. Blanton of Radey Thomas Yon & Clark in Tallahassee spoke to the Government Bar Association about state agency procurements in Florida. Blanton is board certified in state and federal government and administrative practice.

John J. Fumero of Sundstrom, Friedman & Fumero in Delray Beach served as program co-chair at the annual Florida Water Policy "New Frontiers" conference in Tampa. Fumero is board certified in state and federal government and administrative practice.

Gunster Firm News

Luna Phillips of Gunster, Yoakley & Stewart P.A. in Fort Lauderdale has been elected secretary of the Florida Earth Foundation. Phillips is board certified in state and federal government and administrative practice.

Akerman Senterfitt Firm News.

Chambers USA Guide 2012 recognized a total of 15 Akerman practices, with the firm's Corporate, M&A, and Private Equity and Insurance practices receiving top honors in Florida. Chambers also has named 54 Akerman lawyers as leading practitioners in their respective areas of practice in Florida including the following board certified lawyers (listed with their respective certification areas): **Silvia Alderman** (SFGAP)

B. Certification Awards.

Richman is board certified lawyer of the year; Beaulieu wins promotion excellence award.

The Board of Legal Specialization and Education selected **Gerald F. Richman** of Richman Greer in West

Palm Beach for the 2012 Justice Harry Lee Anstead Award for Florida Bar Board Certified Lawyer of the Year. Richman, a former Florida Bar president, is dually certified in business litigation and civil trial. **Stacy Beaulieu** of Delray Beach earned the Award for Excellence in the Promotion of Board Certification. Beaulieu is a board certified marital and family lawyer who was recognized for her ongoing series of South Florida radio ads designed to educate the public about board certification. Each of the certified lawyers selected for the awards will be profiled in upcoming issues of the Capstone.

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

SAVE THE DATE!

Plan to attend

The Government Lawyer Section Long Range Planning Retreat

February 1 and 2, 2013

Plantation Inn, Crystal River, Florida

Friday, February 1, 2013

(Dinner/social 5:30 – 9:00 p.m.)

Saturday, February 2, 2013

(Meeting 9:00 – 11:45 a.m.)

(CLE w/Lunch 12:00 – 1:30 p.m.)

(Meeting 1:45 – 4:30 p.m.)

More details will be provided at the Government Lawyer Section website: www.flgovlawyer.org

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Your Government Lawyer Section Website

Remember to visit the Government Lawyer Section's website. The website contains lots of information about the Section. Look for dates and times of future meetings and minutes of past meetings. Find new CLE courses or CDs and materials on recent CLEs. Get involved with the Florida Bar by contacting members of your executive council through the website.

www.flgovlawyer.org