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Welcome to the Second Edition of the Leon County Attorney's Office's newsletter! After the publication of our first edition, we received significantly positive feedback concerning both the need for and the content of our new publication. We very much appreciate your positive feedback. With that in mind, we have decided to keep the format generally the same as the first edition, but continue to add features of interest to County officials and staff, along with providing additional news information about activities of the

County Attorney's Office.

As we indicated previously, your feedback is sought and appreciated so that we can continue to have a newsletter which you find enjoyable and which meets your professional needs. Please e-mail any suggestions you may have to:

LegalAdvisor@leoncountyfl.gov

Herb Thiele



SUBPOENAS, SUMMONSES AND PUBLIC RECORDS REQUESTS, OH MY!

By: Marcia Labat, Legal Administrator

If you are a County employee who has been served with a subpoena or summons, or received a public records request, then *oh my!* is probably mild compared to what you may have been thinking at that moment. However, there is really no need to be nervous or worried. Here are some basics to remember if and when you join the ranks of the served:

- 1) Review the document immediately, and contact the County Attorney's Office if the document concerns County business.
- 2) Be familiar with the terms *subpoena*, *summons*, and *public records request*.

(a) *Subpoena* is a process by which the Court, through a party in litigation, commands an individual to appear at a certain time, date, and location. A subpoena *duces tecum*, meaning "bring with you") requires the individual to appear with listed documents in hand. Essentially, the subpoena is a "command" and may not be ignored without serious consequences.

(b) A *summons* is the cover page to another document, such as a complaint. The summons contains information about who is being served, as well as instructions on responding to the complaint. Like the subpoena, ignoring a summons and the document attached to it, or delaying in responding to the summons can have serious

consequences for the employee and the County.

(c) *Public Records Request* is probably the most familiar term. While such a request is not a "Court" document, per se, the process is governed by Chapter 119, Florida Statutes, and there are time frames that require our compliance. The County has a well-established process for responding to public records requests. Routine requests may be handled by the Division, but it is important that the Community and Media Relations office, as well as the County Attorney's Office, be made aware of the request. If the request relates to any matter in litigation or potential litigation, contact the County Attorney's Office immediately.

Additional details regarding summonses and subpoenas may be found in Policy 04-1, Service of Process of Summonses and Subpoenas, adopted by the Board of County Commissioners in February 2004.

See: <http://www.leoncountyfl.gov/bcc/policy/pdf/03-02-3.pdf>.

For more information on responding to a public records request, you may contact either Community and Media Relations or the County Attorney's Office. You may also refer to the seminar materials located on the intranet under the County Attorney's Office's section. See: <http://intra.leoncountyfl.gov/dir.asp>.

COURT GRANTS GOVERNMENT EMPLOYEE IMMUNITY FROM SUIT IN IMPORTANT RULING

By: Patrick T. Kinni, Deputy County Attorney

The Florida Supreme Court in *Andreas Keck v. Ashleigh K. Eminisor*, recently considered the issue of whether an employee claiming immunity from suit under Section 768.28 (9)(a), Florida Statutes, which shields government employees from personal liability in tort or being named as a party defendant for acts within the scope of the worker's employment, is entitled to a direct appeal of an adverse trial court ruling concerning such claim of immunity. While the underlying facts of the case were convoluted at best, the ruling however was a clear and direct pronouncement by the Court, safeguarding the protections of public officials and employees under what has come to be known as official or individual immunity.

The case arose as a result of a negligence suit filed by Ashleigh Eminisor against Andreas Keck, a bus driver and employee of the JAX Transit Management Corporation (JTM). Eminisor also sued JTM and the Jacksonville Transit Authority (JTA). The Complaint alleged that Keck negligently operated a bus owned by the JTA, thereby injuring Eminisor, who was a pedestrian crossing the street. JTM and JTA each sought immunity from suit under the doctrine of sovereign immunity. Keck however claimed individual immunity pursuant to Section 768.28(9)(a), arguing that he was provided immunity not only from liability for damages claimed by Eminisor, but also from being named as a defendant in the suit, because he was an employee of JTM, acting primarily as an instrumentality of JTA, a subdivision of the state. The trial court denied Keck's motion to dismiss the Plaintiff's case, finding that Keck was not entitled to individual immunity. That denial of Keck's immunity claim was challenged to the First District Court of Appeal, which declined to exercise certiorari review over the trial court's order but certified as one of great public importance to the Florida Supreme Court, the following question:

Whether review of the denial of a motion for summary judgment, based on a claim of individual immunity under Section 768.28(9)(a) without implicating the discretionary functions of public officials, should await the entry of final judgment in trial court?

Section 768.28(9)(a), Florida Statutes, provides in pertinent part:

No officer, employee, or agent of the state or any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act,

event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. . . .

The Court concluded that individual immunity provided under the aforementioned statute is applicable to each "officer, employee, or agent of the state or any of its subdivisions" regarding or concerning "any act, event, or omission of action in the scope of her or his employment or function" provided there is no "bad faith . . . malicious purpose or . . . wanton and willful disregard of human rights, safety or property." *Keck v. Eminisor*, SC 10-2306 at page 8 (Fla. 2012). The Court in considering the certified question of great public importance, examined the nature of the rights of government workers and officials covered by individual immunity from suit and determined that if direct appeal of a trial court order denying a claim of immunity from suit is not subject to immediate appellate review, such right "is effectively lost" when "a case is erroneously permitted to go to trial" as the subject public official or employee "cannot be 're-immunized'" when improperly "required to stand trial or face the other burdens of litigation". *Keck* at page 11, citing *Tucker v. Resha*, 648 So. 2d. 1187, 1189 (Fla. 1994) (citations omitted).

In conclusion, the Supreme Court not only answered the certified question in the negative, thereby granting Eminisor's request to overturn the trial court's initial decision and grant a dismissal of the suit in his favor, but also found compelling reasons based upon policy considerations to amend the Florida Rules of Appellate Procedure, to grant a direct right of review of any trial court order denying claims of individual immunity. Thus, Keck was granted immunity from suit because the court found that he was acting within the course and scope of his duties as a bus driver for a corporation acting primarily as an instrumentality of a subdivision of the state. Accordingly, a public employee working within the course and scope of his or her duties is immune not only from liability resulting from negligent actions or conduct, but is likewise immune from being named in a suit, absent bad faith. Any denial of such claim of immunity is, as a result of the Supreme Court's decision in *Keck v. Eminisor*, now subject to immediate appellate review.

On a side note, the Leon County Attorney's Office was solicited by the Florida Association of County Attorneys to file an Amicus Curiae Brief in support of Andreas Keck in this case before the Florida Supreme Court.

BOCC Chairman, Nick Maddox



We are very fortunate to work for the residents of Leon County for many reasons. Our community is a beautiful and vibrant place filled with good people who have a strong work ethic. For many of us the reason we chose Leon County as our home is because it is a truly wonderful place to raise a family and after you settle here you never want to leave.

I feel privileged to have become a part of this Leon County family. After my election in 2010, I began to realize that one of the major reasons I like living here is because of the dedicated employees of our local government who manage to keep our lives running smoothly without our even realizing it. Too many times I receive the credit for the good things that happen in this community when I know the true heroes are the men and women who work in this organization. I appreciate your service.

One of the committed divisions in our Leon County family is the County Attorney's Office. Oftentimes we do not like to think of the County Attorney's Office because when they get involved it is usually

following a problem and means complaints, lawsuits, depositions, and the like. It occurred to me, however, how many less problems we might encounter if we all thought about involving the CAO before we started.

Did you know that our County Attorney is here to help us avoid problems as much as to help us legally solve them? Being proactive and getting assistance from the CAO at the beginning of a project is likely to mean we will not need them at the end of it.

When we have a legal question or just need an opinion before we move forward, let us all commit to contacting our County Attorney's Office. They are here to assist us as we do the work of Leon County, and contrary to what you might think of lawyers, they are a great group of people who are dedicated to this community just like the rest of us! Take a moment and get to know this wonderful staff and whenever you need assistance - just ask.

Yours in Service,

Nick Maddox

UPCOMING EVENTS!!



RACE THE RUNWAY

Please join the County Attorney's Office in supporting Race the Runway, 5K and 1K event on the runway at the Tallahassee Regional Airport. All proceeds will benefit Honor Flight Tallahassee.

When: April 13, 2013 Time: 8 a.m.

Register at: <http://www.racetherunway5k.com/>

5K Cost: \$30 after April 2, 2013

WITNESS PREPARATION TRAINING!



Who should attend? **ALL** County employees who may provide deposition or trial testimony for Leon County.

Why? *To help you be better prepared—and, to educate you on deposition and trial protocols for witnesses*

Where? Program Room A, Main Library
200 West Park Avenue

When? July 16, 2013, 2:00 p.m. – 4:00 p.m.

RSVP to: Emily Anderson, at andersone@leoncountyfl.gov
(include your name, division, and telephone number)

Presented by: Leon County Attorney's Office and
Carr, Allison Law Firm

Beyond the Office

On Thursday, March 7, 2013, through Saturday, March 9, 2013, the Florida State College of Law hosted a multi-law school mock trial competition involving schools from all over the United States. Since the Florida State University College of Law was hosting this event to showcase their new Advocacy Center (the former First District Court of Appeal facility) located on the corner of Pensacola and Duval Street, the Florida State University College of Law's mock trial team did not participate; however, scores of teams from around the country did participate and utilized the trial practice facilities and courtrooms at the new Advocacy Center for the competition. Each team consisted of 4 or more law



students (plus their advisor) who took on the roles of either plaintiff or defense counsel, plus the witnesses for each side. The competition included opening statements, direct examination, cross examination, use of demonstrative evidence, and closing arguments. Volunteers were solicited to act both as the presiding judges, as well as scoring judges (who assumed the role of being a "juror" for the event). County Attorney Herb Thiele volunteered to act as one of the scoring judges for the competition held on March 7, 2013. The competition lasted approximately 4 hours on the afternoon of March 7, 2013, and "blind scoring" was done by each of the scoring judges so as to not influence one another or the overall winning team's score. Additionally, none of the volunteer judges were made aware of what school each of the participating teams represented to maintain neutrality in the scoring process.

County Attorney Herb Thiele stated, "The participants were excellent, and they showed a great deal of professionalism and knowledge about trial practice that will serve them well when they graduate law school and begin the practice of law around the country."

Coming Soon to a Department Near You!

In an effort to get to know County Staff better and to learn about the work you do, the County Attorney's Office is hitting the road to visit different County offices. Our first stop will be the Department of Development Support and Environmental Management on April 25, 2013.

The County Attorney's Office will supply breakfast for each office visit. We hope to put faces with names via introductions, and share

with the Departments we visit how we can assist you in your work on behalf of the County. We also hope that you will share with us more about what you do on a daily basis, how you can assist us, and maybe even give us a guided tour.

Our end goal is to maintain our great working relationships, as well as look for areas where we can improve. To that end, we look forward to visiting your Department sometime soon.

Please direct all questions, comments, and submission requests to LaShawn Riggins at: LegalAdvisor@leoncountyfl.gov



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