



LEON COUNTY ATTORNEY



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Herb Thiele was selected by the Board in 1990 to create the County's first in-house legal department and has served Leon County for over twenty-five years. Under Thiele's leadership, the office continues to remain small but extremely efficient, with only 5 lawyers handling the legal affairs of Leon County, Florida.

In addition to being active in several state and national organizations that serve local government lawyers and advance the interests of local government law, Thiele has presented lectures or published articles on many local government law topics, including the Sunshine Law, the Open Records Law, and the Honest Services Act and Ethics. He serves on the Board of Directors for both the Florida Association of Counties Foundation and the International Municipal Lawyers Association, and currently serves as the President of IMLA.

Thiele leads a team of skilled professionals who provide high-quality, timely and cost-effective legal representation to the Board and other officials of Leon County.

SERVING THE LEGAL NEEDS OF LEON COUNTY GOVERNMENT

Legal matters from this past year that are of particular note include the following:

- **Lori Owen, Caridad Molina and Donna Abramitis, Appellants, v. City of Tallahassee, Leon County, Florida, et al., Appellees, Circuit Court Case No. 2012-2568; First DCA Case No. 1D15-5473** — Fire Rescue Services Special Assessment – This lawsuit challenges the validity of Leon County's fire rescue services assessment, and more specifically, the City's ability to collect same via utility bills. Plaintiffs amended their complaint on three occasions, and served their Third Amended Complaint in 2013. On July 7, 2015, a hearing on class certification was held. The court is required to first determine the appropriateness of the class, before the parties go to trial on the merits of the claims related to the constitutionality of the fire rescue services assessment. The trial court denied the Plaintiff's Motion for Class Certification, and in December 2015, the Plaintiffs appealed that decision to the First District Court of Appeal. Oral Argument was held before a three-judge panel at the First District Court of Appeal in June 2016, resulting in the First DCA upholding the lower court's decision denying class certification. The Appellants filed a Motion asking the Court to rehear the matter as a "case of exceptional importance or for certification of a question of great public importance." This motion was also denied and the case has been remanded back to the lower court for a trial on the merits with the three named Plaintiffs only. The County Attorney's Office continues to work with the City Attorney's Office in the defense of this matter.
- **Sarah Bohentin, Plaintiff, vs. CESC, Inc., et al., Defendants, vs. Leon County, Third Party Defendant; Circuit Court Case No. 2016-2411** — Sexual Harassment and Employment Discrimination Claim – Leon County was added as a third-party defendant to this litigation when nine of the ten defendants filed a Third-Party Complaint seeking a declaratory judgment that the County's Human Rights Ordinance, with regard to the Ordinance provisions concerning procedural matters and punitive damages, is preempted by the Florida Civil Rights Act of 1992. In defense, the County filed a Motion for Summary Judgment, which was heard by the Court on



Did You Know

Since 1997, the County Attorney's Office has partnered with the Florida State University College of Law to host over 50 student interns, providing the interns with an on-the-job experience and an opportunity to apply the theory they have learned in law school. Under the supervision of an Office attorney, the interns research legal issues, draft resolutions, ordinances, and contracts, and also take depositions and appear in court.

August 24, 2017. The parties' proposed Orders are due to the Court by September 8, 2017.

- **Leon County, Florida v. Buoy, LLC . . . Petrandis Mortgage and Investments, Inc., Case No. 2006-1281** - Eminent Domain – Rainbow Acres Paving Project – the Defendants, Buoy, LLC, Woodrun East, LLC, and Petrandis Mortgage and Investments, Inc., refused the County's offer for purchase of their interest in the Rainbow Acres parcels, thereby sending this matter to trial. Following a jury trial, the County obtained a verdict in the exact amount of the County's first written offers, thereby resulting in no attorney's being paid to opposing counsel, saving the County thousands of dollars.
- **Brian Trent vs. Leon County Animal Control, Case No. 2015-83** — On April 14, 2015, a Complaint was filed against Leon County Animal Control by Brian Trent, alleging that Leon County Animal Control was negligent in its handling and transporting of the plaintiff's two dogs and as a result, caused the death of the two animals. The County's insurance carrier has declined coverage in this matter due to exclusions in both our General Liability and Auto Liability policies for "property in the care, custody or control of the

COUNTY ATTORNEY OFFICE HIGHLIGHTS



insured.” This case was unsuccessfully mediated as the parties were at an impasse. The case is scheduled for trial the week of October 23, 2017.

- **Kim Tober v. Leon County; Case No. 2016-1649** – On July 20, 2016, a Complaint was filed against Leon County by former Leon County Employee Kim Tober, under Chapter 760, Florida Statutes. Ms. Tober alleges that she was discriminated against because of her age and race, and that she was subjected to a hostile work environment. Since this was filed in state court the cap is \$200,000 including plaintiff attorney fees. Outside counsel has been assigned to this case by the County’s insurance carrier. On September 19, 2016, a Motion to Dismiss was filed on behalf of Leon County. On May 15, 2017, we were served with the Plaintiff’s First Request for Production, the County submitted its response on June 27, 2017. To date the Plaintiff has not responded to the County’s Motion to Dismiss although the County has made numerous attempts to schedule the hearing with Plaintiff’s counsel. The County will not be filing an answer to Plaintiff’s Complaint until the Motion to Dismiss is resolved.
- **Jan K. Sebastian v. Leon County; Case No. 2011-2065** – In 2011, Ms. Sebastian filed a complaint alleging negligence and inverse condemnation regarding a body of water known as Gilbert Pond and the dam Ms. Sebastian owns, which she must drive across to access her property. In 2009 an area homeowners’ association conducted a restoration project involving Lakes Anna, Carolyn, and Jeff, for which the County issued permits and provided partial funding pursuant to a settlement agreement reached in 2004 in a lawsuit between the homeowners’ association and Leon County. Ms. Sebastian claimed the County was responsible for the project, which resulted in damage to her dam and an unconstitutional taking of her property. The case proceeded through discovery and several changes in counsel for the Plaintiff, and was scheduled to proceed to trial on June 22, 2017. The day before the trial was to begin, the County’s attorneys engaged in what proved to be productive settlement negotiations with the Plaintiff’s counsel, and ultimately reached an agreement that was a cost effective and reasonable resolution under the circumstances. The Board of County Commissioners approved the

settlement agreement on July 11, 2017, wherein the County’s insurer (Travelers) pays \$100,000, the County pays \$65,000, and the County’s second insurer (Preferred) pays \$35,000. On July 24, 2017, the Court entered its *Order Dismissing and Closing Case Following Settlement*.

- **TMDL for Lake Jackson** – The County Attorney’s Office has been actively pursuing keeping the County’s lakes clean. For the last several years, we have worked with the Florida Department of Environmental Protection and the U.S. Environmental Protection Agency on reducing nutrient levels coming into Lake Talquin from Georgia. The BASF Corporation has challenged a proposed Rule submitted by the Florida Department of Environmental Protection, wherein DEP set forth its intent to adopt nutrient TMDLs and load allocations for Lake Talquin. BASF filed a Petition for Administrative Determination of Invalidity of Proposed Rule with the Division of Administrative Hearings in June 2017. The County supports DEP in this proposed rule and was granted Intervenor status by DOAH in July. This matter is in the discovery phase at this time.
- **Old Bainbridge Road at Pullen Road Intersection Improvement Project** – worked with Public Works staff to resolve the last of the project parcel acquisitions at mediation.
- **Sale of County Properties for Affordable Housing** – worked with County staff from Real Estate, Housing, and Administration to implement a new section in the County’s Real Estate Policy to streamline the process of designating the growing number of County surplus properties for affordable housing use and, in cooperation with the Housing Finance Authority, selling the properties and using the sale proceeds to increase the funds earmarked for affordable housing needs.
- **Amendments to the Animal Control Ordinance** – while amending the County’s ordinance, we worked with the Department of Intervention and Detention Alternatives to include a component allowing defendants with the inability to pay fines to complete community service hours. Completion of the community service hours is monitored by the Department, and the County has the ability to convert the hours to a

judgment lien if the defendant fails to complete the hours. Recently, the total costs and fines of one defendant in the amount of \$1,565 were converted to 156.5 hours of community service, to be completed within twelve months.

- **Creation of the Nuisance Abatement Board** – worked with the staff at Development Support and Environmental Management to prepare an ordinance amending Chapters 5, 6, 10, and 14 of the Leon County Code of Laws to streamline the nuisance abatement process, reorganize and rename Chapter 14, and make it consistent with Florida law. The Board approved the ordinance at its meeting of March 7, 2017. The ordinance created a Nuisance Abatement Board, comprised of the members of the Code Enforcement Board, which will consider those cases that have an order from the Code Enforcement Board finding a violation of the Code, specifically dilapidated structure, junk, and unsafe building violations. Included in the ordinance is a process to determine whether the building or premises presents a serious and continuing danger to the public and/or occupants, and if so, then to permit the County to abate the conditions at the expense of the property owner. The County has the option to impose a lien on the property if the owner fails to pay the costs of the abatement.
- **Implementation of House Bill 687, Creation of Comprehensive Right-of-Way Management Ordinance** – in June 2017, the Governor signed into law HB 687, also known as the Advanced Wireless Infrastructure Deployment Act. HB 687 preempted local governments from regulating certain aspects of small wireless facilities and wireless support structures within the public rights-of-way. Prior to HB 687 being signed into law, the County Attorney’s Office assisted staff by drafting resolutions imposing and extending a temporary moratorium on reviewing applications and approval of permits or development orders for the placement, construction or installation of wireless communications structures and facilities in the County’s rights-of-way. We are now in the process of working with staff to develop an ordinance for the Board’s consideration creating a comprehensive right-of-way management plan which is consistent with HB 687.