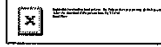


By: John Pacenti

The jury found Florida Transportation Services, a non-union company, was unfairly denied a permit in 2003, 2004 and 2005 to operate in the Port of Miami.



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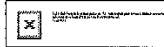
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<p>DailyBusinessReview.com</p>	<p>Justice Watch</p> <p>Overdraft fees suit stays alive in federal court</p> <p>By: Julie Kay</p> <p>A ruling by Senior U.S. District Judge James Lawrence King keeps alive a closely watched consumer lawsuit shining a national spotlight on bank policies that customers allege drive up overdraft fees on checking accounts.</p>	
	<p>Sponsor Spotlight</p> <p>Expert E-Discovery Advice : How and What should be preserved</p> <p>Once the question is asked, the legal practitioner is faced with Pandora's box of techno-legal issues they often wish they had never opened.</p>	
	<p>Fraud</p> <p>Former receiver Lewis Freeman pleads guilty to \$2.6 million fraud</p> <p>By: John Pacenti</p> <p>Miami attorney-accountant Lewis Freeman</p>	

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pleaded guilty to a fraud charge, admitting he pilfered \$2.6 million from court-supervised accounts over a decade.

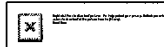


Rothstein Fallout

Questions to Rothstein investment adviser go unanswered

By: Julie Kay

An investment adviser who allegedly verified the legitimacy of phony settlements attracting investors to Scott Rothstein was grilled for hours about his role in the ousted law firm chairman's \$1.2 billion Ponzi scheme.

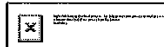


Lawsuit

Charities sue over \$400 million fortune

By: John Pacenti

Walter and Anna Bronner probably never anticipated a worldwide court battle over would still be brewing over their estate more than a decade after their deaths.

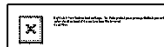


Rothstein Fallout

Boca attorney faces contempt hearing for not halting lawsuit

By: Jordana Mishory

U.S. Bankruptcy Judge Raymond Ray plans to enter an order to show cause for contempt against Boca Raton attorney Roderick Coleman and his client for failing to vacate a default malpractice judgment against Rothstein Rosenfeldt Adler that was entered after the firm was pushed into Bankruptcy Court.

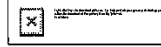


Investigations

Greenberg partner accused of stealing \$1 million

By: Brian Baxter

A Greenberg Traurig partner has been fired after being charged with overcharging a Chicago suburb more than \$1 million to pad his revenue numbers at the law firm.



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Subject: Notes from Friday's Meeting

Good morning Judges,









Following are some of the issues discussed at the Judges' Meeting on Friday, March 12, 2010.

- Judge Fina expects to enter an administrative order related to Foreclosure Mediations within approximately a week. The issue has been discussed on Chief Judges' calls, and the circuits were asked to coordinate their orders in order to ensure as much uniformity as possible among the circuits. We will be reviewing orders from the 4th, 11th, and 19th circuits, comparing them to the Supreme Court's model order, and drafting an order for our circuit based on those samples.
- An agreement between the 3rd and 8th Judicial Circuits allowing for juvenile detention hearings from Columbia, Dixie, Hamilton, Lafayette, and Suwannee Counties to be held in Gainesville on the weekends has expired, and it is currently under review and reconsideration. Judges in the 8th Judicial Circuit have expressed concern about a lack of follow-up by DJJ after juvenile detention hearings are held in Gainesville on the weekends. The 8th circuit will continue to conduct hearings for 90 days to allow for a new agreement to be reached if possible. A copy of Chief Judge Martha Lott's memo regarding this issue is attached for your information.
- Three bills under consideration by the Legislature have the potential to do away with judicial immunity, further reduce judges' salaries, and prevent judges from serving as senior judges for one year following their date of retirement. We will continue to monitor these bills and keep you informed as decisions are made.
- Silvia Harris is no longer employed by the Third Circuit as a Digital Court Reporter.
- Interviews were conducted on Friday afternoon for the Child Support Hearing Officer position.
- Crystal Ecker, our new law clerk, will begin on April 1; Adam and Lucas will leave on May 1; Jackie Jo Brinson will start as a law clerk on August 1; and we will be interviewing soon for a third law clerk to begin on August 1.
- *(Not mentioned at Judges' Meeting, but also staff news)* We are currently advertising for the User Support Analyst position previously held by Harold Blakley, and we expect to conduct interviews and fill that position soon.
- Debbie DeNike was in attendance at the meeting and reported to the judges that she expects to have time to take on new responsibilities as soon as a Child Support Hearing Officer is hired and begins work. Family court and foreclosures were discussed as two possible areas that she might add to her probate workload.
- Judge Fina reminded everyone that any requests for changes in assignments for the July 2010 – June 2011 calendar be made to him by the end of the day on Friday March 12th.

Sondra Lanier
Trial Court Administrator
Third Judicial Circuit
(386)758-2163 Lake City
(386)362-1017 Live Oak

(386)362-2658 Fax

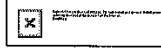
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	<p><u>Patent Infringement</u></p> <p>Inventor gets \$15 million after suing Home Depot</p> <p>By: Jose Pagliery</p> <p>An inventor was awarded \$15 million on his patent claim that Home Depot pushed him out of a deal and took his design for a safety device on a radial-arm saw.</p> 	
	<p><u>Florida Supreme Court</u></p> <p>Florida Supreme Court justices get rental car liability case</p> <p>By: Jordana Mishory</p> <p>The state Supreme Court is considering whether a new federal law exempting car and truck rental companies from liability for crashes applies in Florida.</p> 	
	<p><u>The Judiciary</u></p> <p>State wants judge tossed from case after run-in with trooper</p> <p>By: John Pacenti</p> <p>A traffic stop involving Palm Beach Circuit</p>	

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Judge John Kastrenakes produced a motion by prosecutors to disqualify him from a criminal case involving a Florida Highway Patrol arrest.

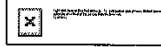


Supreme Court

Justices say Florida man not considered a violent offender

By: John Pacenti

The U.S. Supreme Court ruled a Florida man should not have been sentenced as a violent career criminal. Curtis Johnson may be re-sentenced to time served.

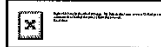


Legislature

Business community likes new 'slip-and-fall bill'

By: News Service of Florida

Under the bill, plaintiffs in slip-and-fall cases would have to prove a store knowingly put them in danger.

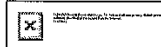


Supreme Court

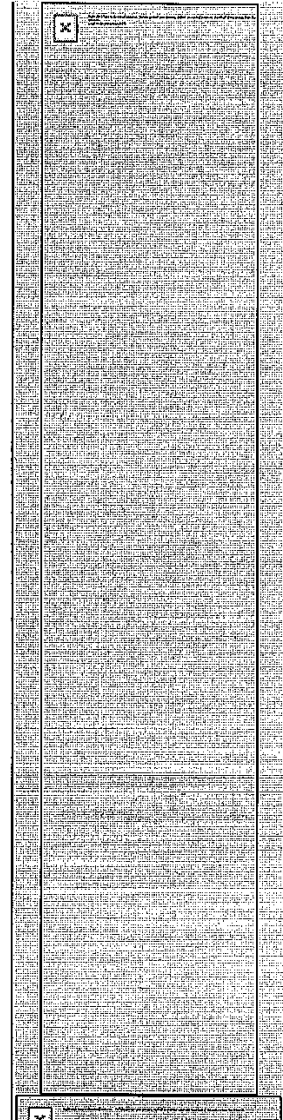
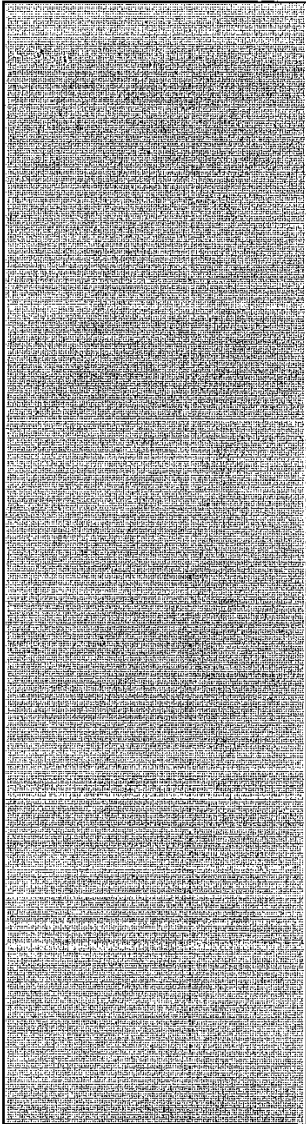
Justices struggle with Broward habeas case

By: Marcia Coyle

The U.S. Supreme Court has to decide just how bad a lawyer must be to warrant stopping the clock on the time for filing a prisoner's federal habeas petition.



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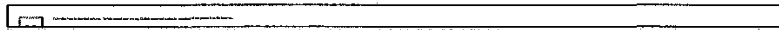
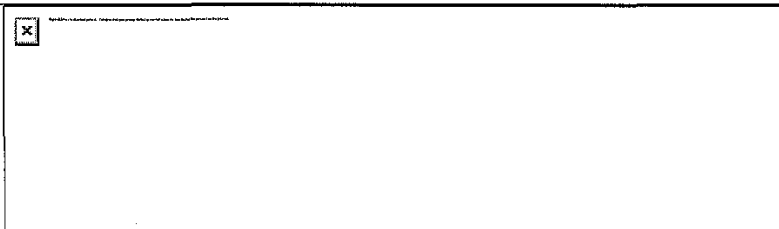
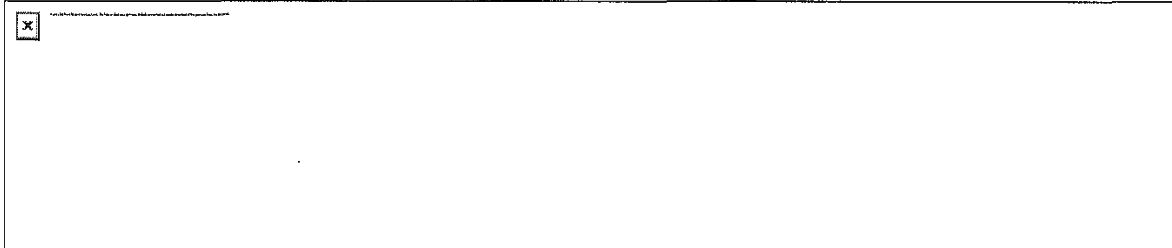
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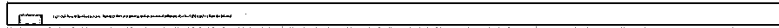
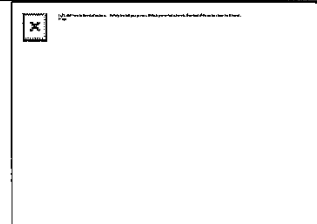
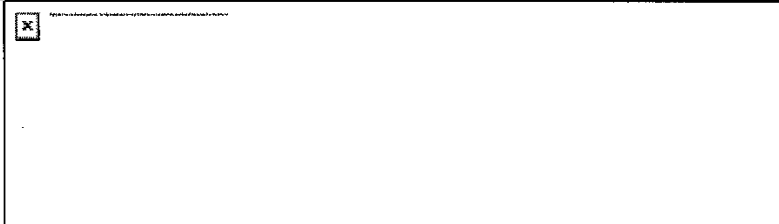
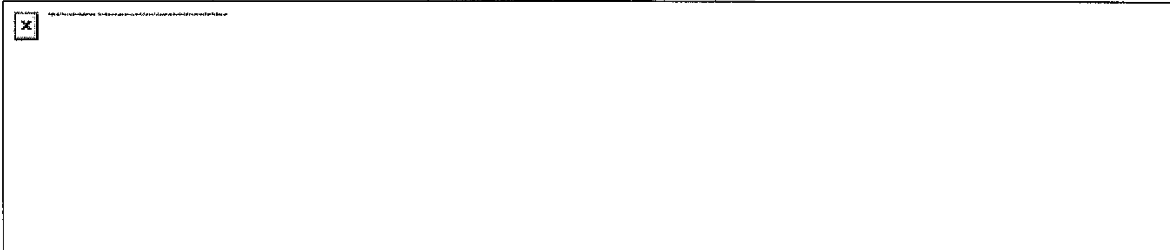
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Are you prepared to defend your clients that may be facing foreclosure this year?

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Mike Wasylik, Esq. is a founding member of Ricardo, Wasylik & Kaniuk PL and serves as Chair of the Foreclosure Defense Department. A graduate of Northwestern University and Florida State University College of Law, his professional experience includes legislative work for the United States Congress, both for the House and Senate. He has served as litigator for leading firms in Florida, Washington D.C. and Virginia. Mr. Wasylik serves

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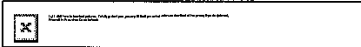
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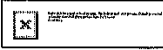
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	<p>Sponsor Spotlight</p> <p>Expert E-Discovery Advice : How and What should be preserved</p> <p>Once the question is asked, the legal practitioner is faced with Pandora's box of techno-legal issues they often wish they had never opened.</p>	
	<p>Dreier Case</p> <p>Striking similarities: Tale of two Ponzis</p> <p>By: Jordana Mishory</p> <p>New York law firm leader Marc Dreier's meteoric rise and fall amid fraud has striking</p>	

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similarities to South Florida's own Scott Rothstein.



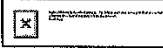
Lewis Freeman

Lewis Freeman charged with mail fraud

By: John Pacenti and Jose Pagliery

The attorney-accountant appears likely to make a plea deal after prosecutors accused him of skimming funds from accounts he controlled under court appointments.

[Watch the DBR TV report and the news conference announcing the charges](#)

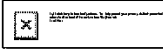


Federal Court

Judge closes Miccosukee's case to halt road project

By: Julie Kay

A Miami federal judge has dismissed and closed a case after the government agreed not to rebuild a decaying Everglades road without an extensive environmental review.

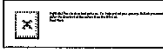


Justice Watch

Stanford victims want receiver in Antigua ousted

By: John Pacenti

A Miami man who lost \$2.7 million when Stanford International Bank collapsed is leading the charge to have the court-appointed receiver replaced in Antigua.



Supreme Court

Ruling defines 'principal place of business'

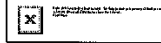
By: Marcia Coyle

The U.S. Supreme Court rules a corporation's principal place of business for determining

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federal jurisdiction is its "nerve center," typically its headquarters state.

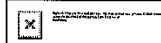


FTC

Federal judge dismisses antitrust claims

By: Sheri Qualters

Attempts by the Federal Trade Commission to attack "pay-to-delay" tactics in the pharmaceutical industry suffer a setback in federal court.



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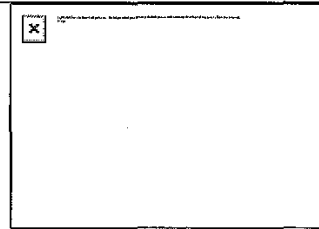
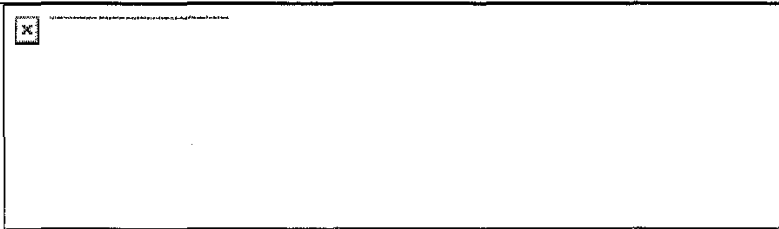
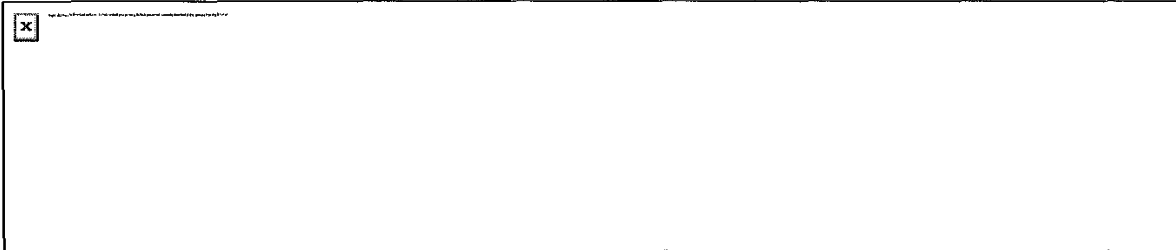
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FLORIDACRIMINALLAW Weekly Report

Vol. XVI, No. 8

February 26, 2010

Written by Kurt Erlenbach

Attached is 16 Crim.L.Wkly.Report # as an Adobe PDF file, which can be read using free Adobe Acrobat Reader software. If you do not have the necessary software, check <http://www.adobe.com/acrobat/>, where you can download the software. Please contact Amadeas Legal Publications at (321) 269-2293 or Amadeas@cfl.rr.com if you have any other difficulties with this file.

SCOTUS reverses *Powell*

In *S. v. Powell*, 969 So. 2d 1060 (Fla. 2d DCA 2007), the Second DCA set off a wave confession suppressions in Hillsborough County based on a faulty *Miranda* warning used by the sheriff's department. The warnings stated, "You have the right to remain silent. If you give up the right to remain silent, any-thing you say can be used against you in court. You have the right to talk to a lawyer before answering any of our questions. If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning. You have the right to use any of these rights at any time you want during this interview." Powell alleged that the failure to inform the suspect that he had the right to an attorney during questioning, as well as "before answering" any ques-tions, provided an inadequate description of his fifth amendment right against self-incrimination.

In *S. v. Powell*, 998 So. 2d 531 (Fla. 2008), the Florida Supreme Court affirmed the Second DCA, and on February 23, the **US Supreme Court reversed in a 7-2 decision.**

The Court began with a ruling that that the FSC's decision in *Powell* rested not solely on independent state grounds. "Powell notes that 'state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution.' Brief for Respondent 19-20 ... Powell is right in this regard. Nothing in our decision today, we emphasize, trenches on the Florida Supreme Court's authority to impose, based on the State's Constitution, any additional protections against coerced confessions it deems appropriate. But because the Florida Supreme Court's decision does not 'indicat[e] clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent [state] grounds,' *Long*, 463 U. S., at 1041, we have jurisdiction to decide this case."

Turning to the substance of the argument, the Court held, "The four warnings *Miranda* requires are invariable, but this Court has not dictated the words in which the essential information must be conveyed. ... In determining whether police officers adequately conveyed the four warnings, we have said, reviewing courts are not required to examine the words employed "as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably 'conve[y] to [a suspect] his rights as required by *Miranda*.'" *Duckworth*, 492 U. S. at 203 (quoting *Prysock*, 453 U. S., at 361).

...

"The Tampa officers did not 'entirely omi[t],' post, at 9, any information *Miranda* required them to impart. They informed Powell that he had 'the right to talk to a lawyer before answering any of [their] questions' and 'the right to use any of [his] rights at any time [he] want[ed] during th[e] interview.' App. 3. The first statement communicated that Powell could consult with a lawyer before answering any particular question, and the second statement confirmed that he could exercise that right while the interrogation was underway. In combination, the two warnings reasonably conveyed Powell's right to have an attorney present, not only at the outset of interrogation, but at all times. "To reach the opposite conclusion, i.e., that the attorney would not be present throughout the interrogation, the suspect would have to imagine an unlikely scenario: To consult counsel, he would be obliged to exit and reenter the interrogation room between each query. ...

"The Florida Supreme Court found the warning misleading because it believed the temporal language—that Powell could 'talk to a lawyer before answering any of [the officers'] questions'—suggested Powell could consult with an attorney only before the interrogation started. 998 So. 2d, at 541. See also Brief for Respondent 28-29. In context, however, the term 'before' merely conveyed when Powell's right to an attorney became effective—namely, before he answered any questions at all. Nothing in the words used indicated that counsel's presence would be restricted after the questioning commenced. Instead, the warning communicated that the right to counsel carried forward to and through the interrogation: Powell could seek his attorney's advice before responding to 'any of [the officers'] questions' and 'at any time . . . during th[e] interview.' App. 3 (emphasis added). Although the warnings were not the clearest possible formulation of *Miranda*'s right-to-counsel advisement, they were sufficiently comprehensive and comprehensible when given a commonsense reading."

The majority decision was written by Justice Ginsberg, and Justices Stevens and Breyer dissented.

Tenth Circuit Assistant Public Defenders Cynthia Dodge and Deborah Kucer Brueckheimer participated with the brief, and APD Brueckheimer did the oral argument. AAG Joseph Jacquot argued for the state.

Supremes detail woeful state of Florida's judicial system

Using the constitutional requirement to certify each year the need for new judgeships in each circuit and county as its mouthpiece, the Florida Supreme Court Chief Justice Peggy Quince February 25 described how "court operations have been significantly hampered by the loss of positions that provide direct support to our judges."

"In order to comply with the legislative request to reduce its budget, Florida's court system over the last three budget years has lost or eliminated 103.25 case managers, 23.75 magistrates and associated administrative staff, 38.5 law clerks, 18.5 due process positions (i.e., court reporters, court interpreters, and expert witnesses), and 106.5 positions from court administration, appellate clerks' offices, and appellate marshals' offices. Of the 290.5 total positions lost in the judicial branch, 249 trial court positions have been eliminated throughout the state. Also substantially reduced were contractual dollars used to hire Civil Traffic Infraction Hearing Officers (CTIHO). As a result, much work previously performed by CTIHOs was absorbed by our county court judges.

...

"Other factors contributing to circuit court work-load include the mortgage foreclosure crisis previously mentioned which continues to overwhelm Florida's court system. ... Over a 36-month period (Fiscal Year 2005-2006 to Fiscal Year 2007-2008), real property/mortgage foreclosure filings increased by 396 percent in our trial courts. During the same time period, the clearance rate for real property/mortgage foreclosure cases decreased by 52 percent, from 94 percent in Fiscal Year 2005-2006 to 42 percent in Fiscal Year 2007-2008. According to Realty Trac, Florida has the third highest rate of mortgage foreclosures in the country with one in every 158 housing units in foreclosure. Condominium foreclosures are contributing to the crisis.

...

"This Court also remains concerned about the staffing levels of state attorney and public defender offices, the Offices of Regional Counsel, and the offices of the Capital Collateral Representatives. The need persists to reconcile the certification of new judgeships with sufficient staffing for these entities. This is a systemic issue and should be approached as such. We encourage the Legislature to consider the needs of the state attorneys, public defenders, Offices of Regional Counsel, and Capital Collateral Representatives if new judgeships are authorized for our criminal divisions, particularly in light of the staffing reductions they have experienced in recent years.

...

"From Fiscal Year 2006-2007 to Fiscal Year 2007-2008 total filings have increased by 21 percent in circuit court. Growth in civil filings by 85 percent is the main contributing factor to the statewide increase in circuit court. Real property and mortgage foreclosure case filings have more than doubled from the previous fiscal year, representing an increase of 171,426 filings. Product liability, condominium, and contract and indebtedness case filings have also risen considerably, by 267 percent, 117 percent, and 29 percent respectively.

"Substantial growth in filings in felony case types also contributed to an overall rise in circuit court filings from Fiscal Year 2006-2007 to Fiscal Year 2007-2008. The largest felony case type in terms of number of filings, property crime (including burglary, theft, worthless checks, and other felonies)

increased by five percent. Additionally, capital murder and robbery case filings also rose by a considerable percentage, six and 15 percent respectively.

...

"Further, the overall statewide circuit court clearance rate from Fiscal Year 2006-2007 to Fiscal Year 2007-2008 has decreased by ten percent. Clearance rates in all divisions dropped in Fiscal Year 2007-2008, with the lone exception of the circuit criminal division. The chief judges of the trial courts are ensuring that all due process (e.g., speedy trials) and other constitutional requirements related to felony proceedings are being met. This often requires the redeployment of judicial resources from other court divisions. The circuit civil division experienced a significant clearance rate decline of nineteen percent, statewide. Similarly, the county court clearance rate decreased by four percent with the county civil division declining by five percent.

...

"Florida's court system remains under duress. The state and national recession of the last two years and the resulting budget reductions for the courts are taking a sustained toll on Florida's judges, court staff, and most importantly those who are accessing our courts. Case filings are up and clearance rates are down. Judicial dockets are full, scheduling is problematic, and case processing times are delayed.

"Florida's court system has now gone three years without the authorization of any new judgeships despite a demonstrated and sustained need. The absence of new judgeships is now being felt by all sectors of our society who seek justice through the court system.

"We submit this opinion recognizing that it is difficult for the Legislature to fund the many competing critical issues confronting our state given the fiscal crisis the state is enduring. If funds become available, we encourage the Legislature to authorize those judgeships certified in our circuit and county courts. Additionally, while we have identified our judicial need in this opinion, we are equally concerned with the allocation of adequate court support staff and supplemental resources in the statutorily defined court elements that will enable the courts to respond effectively to the needs of children, families, the business sector, and the public."

6 Attorney for defendant: generally

The tests used to determine whether the state can get a defense attorney disqualified in a criminal case are different than those used in civil cases because criminal cases involved the 6th amendment right to counsel. To get a defense attorney disqualified, the state must show that there is an actual conflict of interest or the serious likelihood of a conflict.

Where defense counsel was a former assistant statewide prosecutor who left that office four years prior, but had worked on the investigation that led to her client's charges, the court properly denies a motion to disqualify counsel when the evidence shows that her involvement in defendant's investigation was minor.

De La Oso, ___ So. 3d ___, 35 F.L.W. D455 (4th DCA 2/24/2010)

26 Crimes: homicide: 1st degree murder

The court properly imposes a life sentence on a 15-year old convicted of being the wheelman in a robbery in which a co-perpetrator killed the victim.

Arrington v. S., ___ So. 3d ___, 35 F.L.W. D327 (2d DCA 2/19/2010)

35 Crimes: miscellaneous substantive crimes

The offense of animal fighting under §828.122 requires some evidence that the animals were engaged in fighting. Evidence that defendant possessed roosters that could have been used for fighting and items that are commonly possessed by those engaged in grooming roosters for fighting is not sufficient to sustain a conviction in the absence of evidence that the roosters actually had been used in a fight.

Rodriguez v. S., ___ So. 3d ___, 35 F.L.W. D448 (4th DCA 2/24/2010)

36 Crimes: resisting officer

LEO was attempting to serve a Marchman Act order, and went to a house occupied by defendant. Defendant told the officer that the subject was not there, and the officer searched, finding her in a closet. Defendant was charged with resisting without violence. Held: Under the circumstances the words alone used by defendant were sufficient to sustain a conviction for resisting.

(See this case for discussion of when words alone can constitute resisting.)

S. v. Legnosky, ___ So. 3d ___, 35 F.L.W. D428 (2d DCA 2/19/2010)

40 Crimes: sex offenses: lewd battery, etc. on a child

When defendant is convicted of offenses which are not properly allowed under double jeopardy rules (here, lewd battery and lewd molestation), the court must vacate one of the convictions. The court errs in withholding adjudication on the crime, rather than vacating.

Bolding v. S., ___ So. 3d ___, 35 F.L.W. D442 (1st DCA 2/24/2010)

44 Crimes: traffic offenses

To convict for leaving the scene of an accident involving unattended property under §316.063(1), the state must show that the defendant damaged other property. The fact that defendant's car was damaged, but failed to show that another property was damaged, gets reversal.

Powell v. S., ___ So. 3d ___, 35 F.L.W. D443 (1st DCA 2/24/2010)

47 Defenses: generally and misc.

For purposes of the duress defense, a threatened harm is "imminent" and "impending" if it is about to take place, and cannot be guarded against by calling for the protection of the law. The defense does not apply when the defendant has the ability to escape the danger without breaking the law.

When the evidence supporting the defense (here, only defendant's testimony) is impeached and is not unequivocal, the court does not err in refusing to grant a JOA.

(See this case for application of a duress defense to the crime of fleeing and eluding.)

Turner v. S., ___ So. 3d ___, 35 F.L.W. D446 (4th DCA 2/24/2010)

54 Double jeopardy and collateral estoppel

When defendant is convicted of offenses which are not properly allowed under double jeopardy rules (here, lewd battery and lewd molestation), the court must vacate one of the convictions. The court errs in withholding adjudication on the crime, rather than vacating the conviction.
Bolding v. S., ___ So. 3d ___, 35 F.L.W. D442 (1st DCA 2/24/2010)

58 Evidence: defendant's statements: *Miranda*

The *Miranda* warnings struck down in *S. v. Powell* 998 So. 2d 531 (Fla. 2008), adequately informed the suspect of his right to have an attorney present with him during questioning, and the decision in that case and *Powell v. S.*, 969 So. 2d 1060 (Fla. 2d DCA 2007), are reversed.
(See this case for an extensive discussion of the language needed to give adequate *Miranda* warnings.)
Florida v. Powell, U.S. (2010), 35 F.L.W. Fed. S ___ (2/23/2010)
reversing *S. v. Powell*, 998 So. 2d 531 (Fla. 2008), and *Powell v. S.*, 969 So. 2d 1060 (2d DCA 2007)

60 Evidence: generally

Allowing a police witness to give his opinion about the credibility of another witness is especially harmful. Where the conviction rests on the testimony of a codefendant, a police officer's testimony that he believed the codefendant would tell the truth gets murder conviction and death sentence reversed.
Tumblin v. S., ___ So. 3d ___, 35 F.L.W. S133 (Fla. 2/25/2010)

62.08 Evidence: hearsay: exceptions: prior consistent statements

A prior consistent statement is inadmissible to bolster or corroborate a witness' testimony because it is hearsay. The statement can be admitted if offered to rebut an express or implied charge against the declarant of improper motive, influence, or recent fabrication.
A decision to admit a prior consistent statement is reviewed on an abuse of discretion standard.
A person was implicated in a murder. The officer's located him, and he immediately stated he wanted to talk to a specific officer. The person eventually confessed to playing a role in the murder, and flipped on his co-perpetrator, the defendant. The witness pled and was to receive a 25-year sentence. During cross, counsel implicitly charged that the witness testified as he did due to improper influence and that he was fabricating to preserve his plea deal, and the state then introduced his prior statement. Held: The court properly admits the prior consistent statements.
Tumblin v. S., ___ So. 3d ___, 35 F.L.W. S133 (Fla. 2/25/2010)

74 Jurisdiction

A 3.850 motion alleging that the statewide prosecutor did not have authority to bring a case because all the elements occurred within a single circuit is governed by the 2-year time limit of the rule, and a motion filed 5 years after the plea is untimely. The fact that the motion attacks the court's jurisdiction does not allow it to be raised at any time.
When the statewide prosecutor files an information without authority, it fails to invoke the jurisdiction of the court. That issue can be raised by postconviction relief, and the error would be fundamental (concurring opinion).
Carbajal v. S., ___ So. 3d ___, 35 F.L.W. D437 (2d DCA 2/24/2010)

78 Juveniles: juveniles prosecuted as adults

The court properly imposes a life sentence on a 15-year old convicted of being the wheelman in a robbery in which a co-perpetrator killed the victim.

Arrington v. S., ___ So. 3d ___, 35 F.L.W. D327 (2d DCA 2/19/2010)

Juvenile was prosecuted as an adult and was sentenced to a juvenile commitment facility. After completing the program and most of aftercare, he was charged with several new offenses and the commitment was re-voked under §985.565(4)(c). At sentencing, the state asked for adult sanctions and presented evidence of the new charges. Held: A resentencing after the revocation of commitment is not like a VOP hearing. The court can sentence based only on the original offense, and may not take into account unproven allegations of new offenses.

Mirutil v. S., ___ So. 3d ___, 35 F.L.W. D468 (3d DCA 2/24/2010)

86 Post-conviction relief: 3.800 motions: 3.800(b) correction of sentencing errors

A claim that the court sentenced defendant vindictively for exercising his right to a VOP hearing is not something that needs to be preserved by a rule 3.800(b) motion. The claim does not raise an error in the sentencing order.

Mendez v. S., ___ So. 3d ___, 35 F.L.W. D426 (2d DCA 2/19/2010)

89 Post-conviction relief: 3.850 motions: generally and miscellaneous

A 3.850 motion alleging that the statewide prosecutor did not have authority to bring a case because all the elements occurred within a single circuit is governed by the 2-year time limit of the rule, and a motion filed 5 years after the plea is untimely. The fact that the motion attacks the court's jurisdiction does not allow it to be raised at any time.

When the statewide prosecutor files an information without authority, it fails to invoke the jurisdiction of the court. That issue can be raised by postconviction relief, and the error would be fundamental (concurring opinion).

Carbajal v. S., ___ So. 3d ___, 35 F.L.W. D437 (2d DCA 2/24/2010)

An order dismissing a 3.850 motion with leave to amend is not an appealable final order, and a notice on the order indicating the need to file an appeal within 30 days is in error.

Havens v. S., ___ So. 3d ___, 35 F.L.W. D436 (2d DCA 2/24/2010)

97 Search and seizure: encounters

LEOs saw defendant and other people standing in the parking lot of a closed business late at night in a high crime area. The officers got out and approached the group, and defendant started to walk away. The officer called defendant back, and he asked whether he possessed anything illegal. The defendant gave him a bag of marijuana. Held: The incident was a Terry stop and not an encounter. The fact that the officer called defendant back to the area, and the fact that there were several officers in the lot conducting a sweep, would indicate to a reasonable person that he was not free to leave.

F.E.H. v. S., ___ So. 3d ___, 35 F.L.W. D451 (4th DCA 2/24/2010)

107 Search and seizure: Terry stops

LEO observed defendant in a drug dealing area get into a car with another person, move around, and

then exit. He observed no hand-to-hand transaction or any money. Held: Court errs in refusing to suppress (but see dissent).

Benemerito v. S., ___ So. 3d ___, 35 F.L.W. D456 (4th DCA 2/24/2010)

LEOs saw defendant and other people standing in the parking lot of a closed business late at night in a high crime area. The officers got out and approached the group, and defendant started to walk away. The officer called defendant back, and he asked whether he possessed anything illegal. The defendant gave him a bag of marijuana. Held: The incident was a Terry stop and not an encounter. The fact that the officer called defendant back to the area, and the fact that there were several officers in the lot conducting a sweep, would indicate to a reasonable person that he was not free to leave. **F.E.H. v. S., ___ So. 3d ___, 35 F.L.W. D451 (4th DCA 2/24/2010)**

120 Sentencing: generally

A claim that the court sentenced defendant vindictively for exercising his right to a VOP hearing is not something that needs to be preserved by a rule 3.800(b) motion. The claim does not raise an error in the sentencing order.

Where the court offered a 3 1/2 year sentence before a VOP hearing, the state offered 4 years, and defendant re-jected both, imposing a 5-year sentence after a hearing shows a presumption of vindictiveness.

Mendez v. S., ___ So. 3d ___, 35 F.L.W. D426 (2d DCA 2/19/2010)

131 Sentencing: probation and community control: violations

The court errs in failing to file a written order indicating which conditions of probation defendant violated.

Manis v. S., ___ So. 3d ___, 35 F.L.W. D422 (5th DCA 2/19/2010)

136 State attorneys: generally

A 3.850 motion alleging that the statewide prosecutor did not have authority to bring a case because all the elements occurred within a single circuit is governed by the 2-year time limit of the rule, and a motion filed 5 years after the plea is untimely. The fact that the motion attacks the court's jurisdiction does not allow it to be raised at any time.

When the statewide prosecutor files an information without authority, it fails to invoke the jurisdiction of the court. That issue can be raised by postconviction relief, and the error would be fundamental (concurring opinion).

Carbajal v. S., ___ So. 3d ___, 35 F.L.W. D437 (2d DCA 2/24/2010)

149 Trial conduct: judgment of acquittal

If defendant's testimony establishing a defense is reasonable and unrebutted, and the testimony completely exonerates the defendant, the court must grant a JOA. But if the testimony is not reasonable on its face, is not unrebutted, or is impeached, the trier of fact can reject the testimony and find the defendant guilty if the elements are otherwise established.

Turner v. S., ___ So. 3d ___, 35 F.L.W. D446 (4th DCA 2/24/2010)

151 Trial – conduct of: jurors: *Neil* challenges

The state exercised a challenge and the defense objected. The prosecutor stated that he saw the juror sleeping, and that he had watched the man for five minutes. Defense counsel stated he had not seen the juror sleeping, and the judge likewise indicated he did not see it. The court allowed the strike. Held: The defense failed to preserve any error.

When a challenge is explained on the basis of nonverbal conduct, to preserve an error the challenging party must rebut the explanation. Merely stating that the objecting party did not see the behavior is not sufficient to preserve the error when the party does not state that the act did not in fact occur. **Harriel v. S., ___ So. 3d ___, 35 F.L.W. D450 (4th DCA 2/24/2010)**

156 Trial – conduct of: witnesses

Allowing a police witness to give his opinion about the credibility of another witness is especially harmful. Where the conviction rests on the testimony of a codefendant, a police officer’s testimony that he believed the codefendant would tell the truth gets murder conviction and death sentence reversed.

Tumblin v. S., ___ So. 3d ___, 35 F.L.W. S133 (Fla. 2/25/2010)

The numbers preceding each section relate to the section numbers contained in the Florida Criminal Cases Notebook. Case names preceded by a bullet [•] contain an unusually good discussion of the point noted.

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The Florida Criminal Law Weekly Report is written by Kurt Erlenbach, 2532 Garden St., Titusville FL 32796 (321) 264-6000; kerlenbach@cfl.rr.com.

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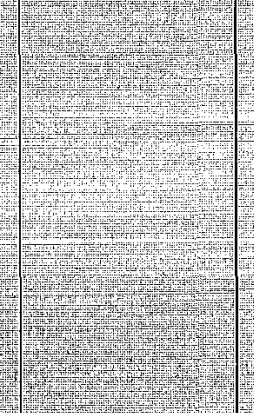




Jenn C. Lussier

From: Donna D. Moore
Sent: Wednesday, February 24, 2010 4:15 PM
To: Darren K. Jackson

1. Nancy Burton called. She is a defendant in a foreclosure case and must have her response to the court by Monday. She wants to sign her document, scan it and send to opposing attorney for signature and then send to the Clerk for filing. (3 different cities between us, def. and plaintiff's atty. are an issue) Our Clerk's office told her to check with us to see if that would be acceptable or if she must file with original signatures.
2. Trooper Hughes cannot attend his cases on March 16th – one is a contested tkt and the other is a mandatory appearance. How do you want to handle the re-scheduling. He said he would put something in writing if necessary.
3. Kent Thompson called and said Tara spoke to Jacksonville re: Macklin and they did not have signed orders yet.

Donna D. Moore, Judicial Assistant
for Judge Darren K. Jackson
Lafayette County
Ph: 386-294-1555

From: Daily Business Review <DBR_Editor@alm.com>
Sent: Tuesday, February 23, 2010 1:11 PM
To: Darren K. Jackson
Subject: Litigation Alert

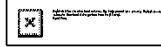
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<p>Today's Headlines</p> <p>Ruden McClosky faces tough 2010 with fewer lawyers and offices</p> <p>The Rodent: Partners are measured by their stable of associates</p> <p>Disagreement flares on how to distribute seized Rothstein money</p> <p>Holland & Knight revenue down 10%</p>	<p><input type="checkbox"/> Legal News And Information You Can't Get Anywhere Else</p>	
<p>DailyBusinessReview.com</p>	<p><u>Lewis Freeman</u></p> <p>Attorney-accountant Lewis Freeman charged with wire fraud</p> <p>By: John Pacenti</p> <p> Attorney-accountant Lewis Freeman was charged today with wire fraud for allegedly skimming funds from the accounts he controlled under court appointments.</p> 	
	<p><u>Scott Rothstein Fallout</u></p> <p>Judge tosses two counts against Rothstein accounting firm</p> <p>By: Jordana Mishory</p> <p> A judge dismissed two counts today in a civil case filed against an accounting firm that worked for Rothstein Rosenfeldt Adler before the Fort Lauderdale law firm collapsed.</p> 	
	<p><u>Asbestos Trial</u></p> <p>Ferrell mistrial declared after jury deadlocks</p>	

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By: Jose Pagliery

An asbestos liability trial in the death of prominent Miami attorney Milton M. Ferrell Jr. ended in a mistrial today after the jury deadlocked.

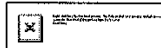


Fees

Widow may not sue late husband's companies for legal costs

By: Jordana Mishory

A Broward Circuit judge has ruled against the widow of Michael Pecora, who killed his business partner before killing himself at their Signature Grand catering hall in Davie. Arlene Pecora disputed who should be paying for legal fees.

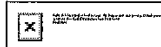


Florida Supreme Court

Court strikes law letting voters rescind signature

By: Jordana Mishory

A Florida Supreme Court majority struck down a state law allowing citizens to revoke their signatures from ballot petitions, finding it guts the initiative process.

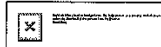


E-Discovery

Judge sanctions plaintiffs for 'ignorant and indifferent' discovery

By: Mark Hamblett

A federal judge has sanctioned 13 plaintiffs suing two collapsed hedge funds for negligence and gross negligence for their failure to preserve electronic files in discovery.



Tort Reform

McCollum endorses bill to cap tobacco lawsuit fees

By: Review staff

A bill that would cap fees for outside attorneys at \$50 million on lawsuits filed by the attorney general's office received a favorable recommendation Tuesday from the state House Criminal and Civil Justice Policy Council.

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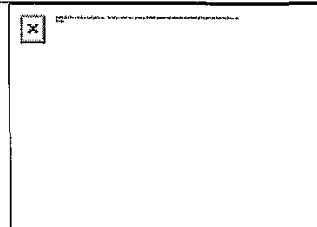
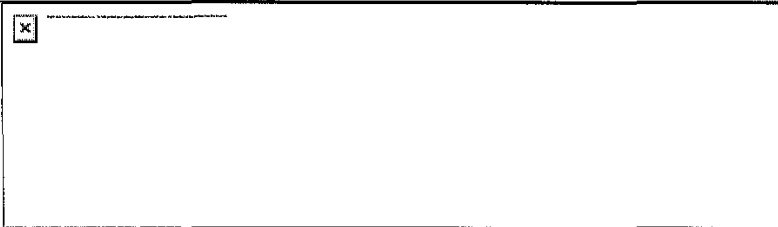
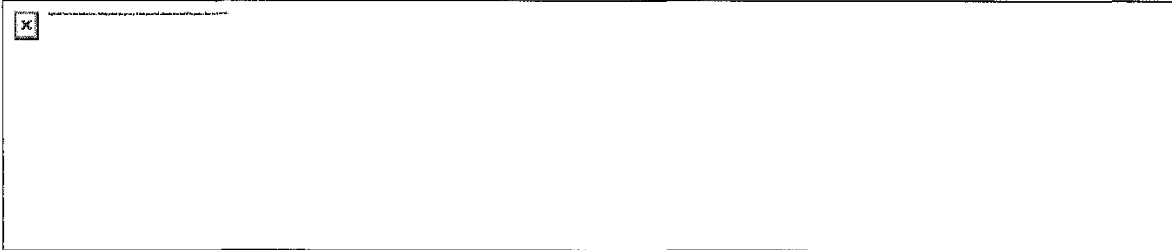
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Sent: Monday, February 22, 2010 8:00 AM
To: Darren K. Jackson
Subject: CLE in Tallahassee: only 2 weeks left to reserve a seat

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As an active member of the Florida Bar, you have a great opportunity to help families stay in their home, while increasing your firm's revenue. To get started, register now for "Foreclosure Defense—Recession Proof Your Practice" on March 9 in Tallahassee, Florida.

Approved by the Florida Bar for 7.5 hours of CLE credit, this is one of the most important courses you could take today. Whether you're currently practicing or considering foreclosure defense, this CLE course provides you with practical information and latest developments regarding:

- Substantive mortgage loan law
- Pleading and procedure

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CLE course"**

*-- Scott K., Real-estate,
Personal Injury and
Foreclosure Defense
Attorney*

**Register now to
reserve your seat!**

March 9 - Tallahassee, FL

Time: 8:30 a.m. - 5:00 p.m.

Where: FSU Alumni Center

Tuition: \$395 (\$495 at the door)

**Florida Bar Approved:
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of ethics.**

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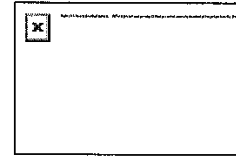
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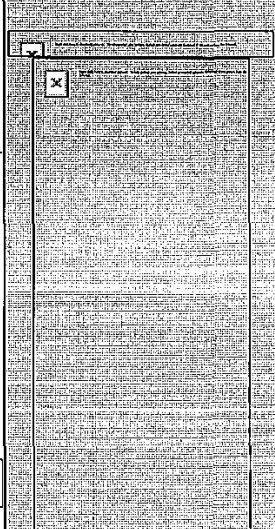

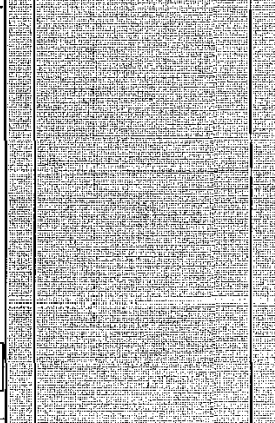
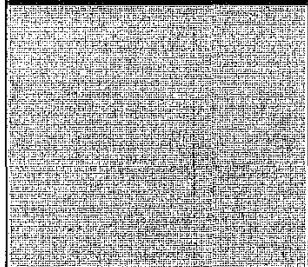
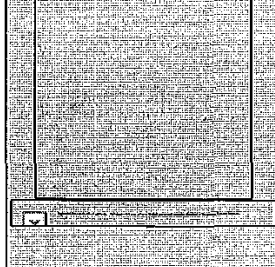
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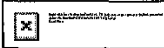
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<p>Today's Headlines</p> <p>Charges against former DEA chief survive – for now</p> <p>South Florida attorneys line up to sue Toyota</p> <p>The Rodent: When presenting at a conference, be 'voice of wisdom' or else</p> <p>U.S. Supreme Court's Thomas gives shout-out to Fla. lawyer</p> <p>DailyBusinessReview.com</p>	<p><u>Rothstein Fallout</u></p> <p>RRA partner sued for \$8 million</p> <p>By: John Pacenti</p> <p>The bankruptcy trustee for the defunct Rothstein Rosenfeldt Adler law firm is suing former equity partner Stuart Rosenfeldt, claiming he collected \$8 million in excessive compensation.</p> <p></p>	
	<p><u>Class Action</u></p> <p>South Florida attorneys line up to sue Toyota</p> <p>By: John Pacenti</p> <p>Toyota is preparing to respond to a firestorm of litigation from disgruntled customers who</p>	

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bought vehicles with sticky accelerators that — as one lawyer said — turn their vehicles into unguided missiles.

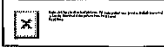


Judiciary

Miami-Dade Judge Karan resigns

By: Julie Kay

Miami-Dade County Court Judge Amy Karan, former administrative judge of the domestic violence division, has resigned due to illness.

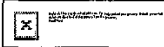


Appeals

Courts clarify law in 3 real estate cases

By: Review staff

South Florida appellate courts ruled on three cases covering construction deposits and lender priority in foreclosures.

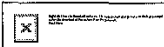


Mergers & Acquisitions

Shareholder lawsuits up 50 percent

By: Amanda Royal

Shareholder lawsuits over mergers and acquisitions are on the upswing, with some law firms dipping into transactions worth less than \$100 million.

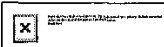


Scott Rothstein

Name partner Adler latest to be sued by trustee

By: Julie Kay

Lawsuits are flying against Scott Rothstein's former law partners by the bankruptcy trustee for his defunct Fort Lauderdale firm, who is trying to collect alleged overpayments and loans to lawyers.



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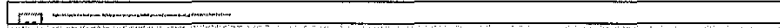
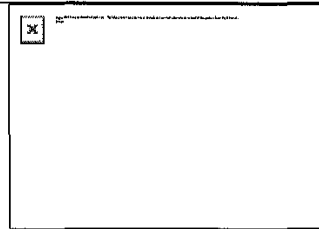
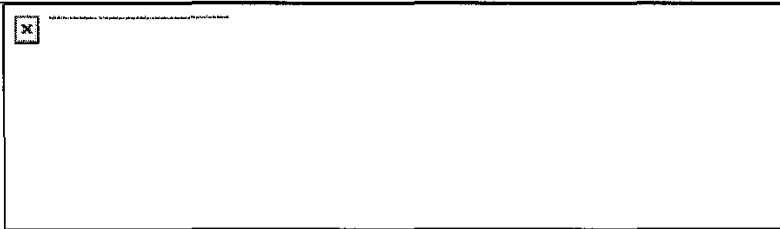
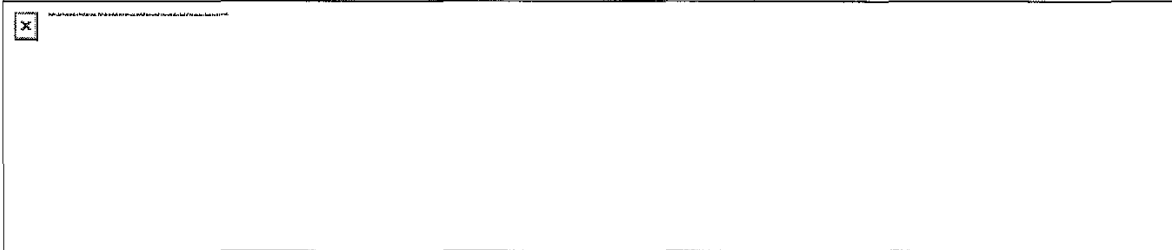
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Sent: Monday, February 15, 2010 8:01 AM
To: Darren K. Jackson
Subject: Important Tallahassee CLE: coming March 9, 2010

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According to the Bureau of Labor Statistics, unemployment in Tallahassee jumped about 3% in just one month--October 2009 to November 2009--hitting an all-time high last month. This could inevitably put more homeowners in foreclosure.

As an active member of the Florida Bar, you have a great opportunity to help families stay in their home, while increasing your firm's revenue. To get started, register now for 'Foreclosure Defense—Recession-Proof Your Practice' on March 9 in Tallahassee, Florida.

Approved by the Florida Bar for 7.5 hours of CLE credit, this is one of the most important courses you could take today. Whether you're currently practicing or considering foreclosure defense, this CLE course provides you with practical information and latest developments regarding:

- Substantive mortgage loan law
- Pleading and procedure

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Time: 8:00 a.m. - 5:00 p.m.

Where: FSU Alumni Center

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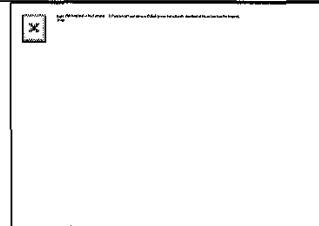
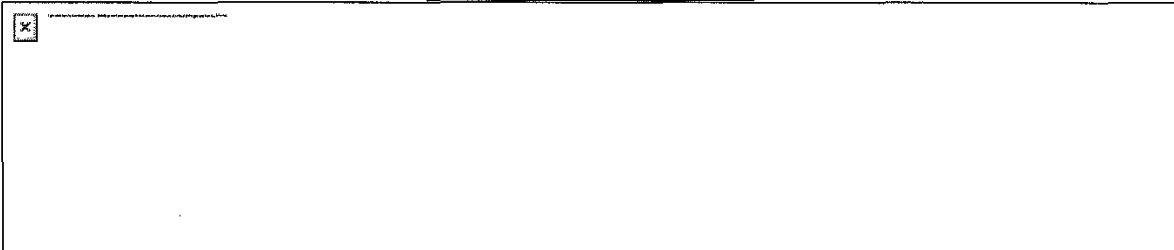
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Sent: Thursday, February 11, 2010 8:00 AM
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Subject: CLE in Tallahassee: March 9, 2010

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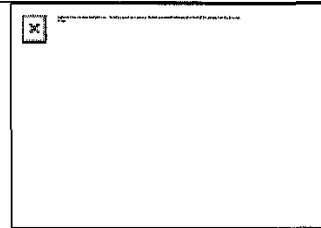
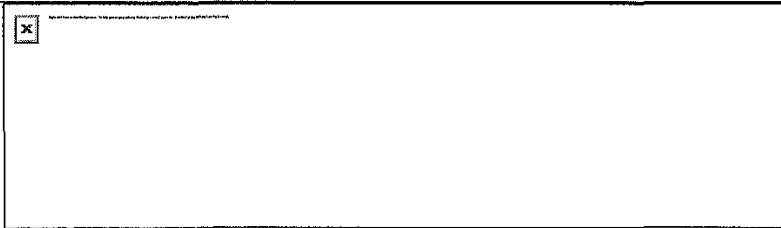
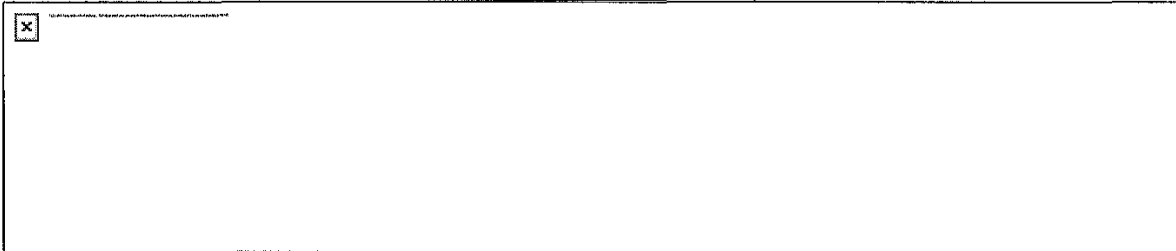
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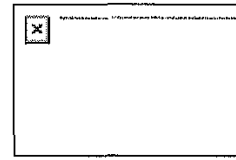
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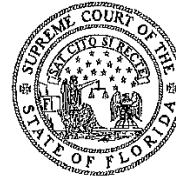
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Jenn C. Lussier

From: Debbie Howells <howellsd@flcourts.org>
Sent: Wednesday, December 30, 2009 4:58 PM
To: Darren K. Jackson
Subject: Cases Involving Complex Civil Litigation

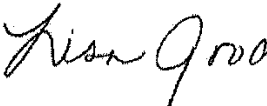


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M E M O R A N D U M

TO: All Circuit Court Judges
All County Court Judges

FROM: Lisa Goodner 

DATE: December 30, 2009

SUBJECT: Cases Involving Complex Civil Litigation

The purpose of this memorandum is to provide you with information about the recent Supreme Court opinion regarding complex civil litigation and the impact it could potentially have on judicial work in the circuit civil and family divisions.

The Court's opinion in In Re: Amendments to the Florida Rules of Civil Procedure – Management of Cases Involving Complex Litigation, Case No. SC08-1141, was released on May 28, 2009. The opinion is available at <http://www.floridasupremecourt.org/decisions/2009/sc08-1141.pdf>. On October 15, 2009, in response to comments from separate interested parties, the Supreme Court released a supplement to that opinion. To view the updated opinion, please go to <http://www.floridasupremecourt.org/decisions/2009/sc08-1141a.pdf>. Some requirements became effective on May 28, 2009 (the date the original opinion was released), and others will become effective on January 1, 2010. We encourage you to review both the May 28 and October 15 opinions for further information.

The Court adopted a total of four **required** forms as part of the Rules of Court Procedure. The first three forms listed below are available on The Florida Bar website (www.floridabar.org) under Professional Practice, Rules of Procedure. The fourth form listed below is available on the Florida Courts website (www.flcourts.org) under Self Help, Family Law Forms.

- 1) Form 1.997, the revised Civil Cover Sheet (effective January 1, 2010);

- 2) Form 1.998, the revised Final Disposition Form (effective May 28, 2009, and revised on October 25, 2009);
- 3) Form 1.999, the new Order Designating a Case Complex (effective May 28, 2009); and
- 4) Form 12.928, the new Cover Sheet for Family Court Cases (effective January 1, 2010).

These forms significantly redefine the categories under which civil and family cases must be reported by the county clerks of court, as required for the Summary Reporting System (SRS). The opinion also establishes a new quarterly Complex Case Report.

With regard to the forms and report, please be aware of the following:

1. Form 1.999 – Order Designating a Case Complex. This form is available on The Florida Bar’s website, but it needs to be adapted for each circuit and county. Those circuits that do not already have the revised form in place should take steps to adapt and implement the form.
2. Complex Case Report. The opinion requires the county clerk of court to report quarterly details on each case that is currently designated as complex. As part of that reporting requirement, the clerks will need to know the hearing/trial dates and last action events. The clerks may need to get this information from the judicial assistants in many cases, as they are the individuals responsible for setting the dates. The new 2010 Circuit Civil instructions, which update the 2002 SRS Manual, are available on the Florida Courts website at http://www.flcourts.org/gen_public/pubs/srsmanual.shtml. These instructions include detailed reporting requirements for the Complex Case Report. Please note that the instructions and Frequently Asked Questions are fairly lengthy (42 pages).
3. Form 12.928 – Family Cover Sheet. The new 2010 Circuit Family instructions, which update the 2002 SRS Manual, are available on the Florida Courts website at http://www.flcourts.org/gen_public/pubs/srsmanual.shtml. These instructions include definitions of the new case types on the cover sheets. Please note that the instructions and Frequently Asked Questions are fairly lengthy (34 pages). We believe that the new case types listed on the cover sheet may generate questions from the clerks to the judges during hearings. In addition, there have already been questions raised about whether the Family Cover Sheet is required for dependency or delinquency cases. In its October 15, 2009, opinion in Case No. SC08-1141, the Supreme Court states the following on page 5 in the first paragraph: “We also amend form 12.928 to make it a Florida Family Law Rule of Procedure Form, as opposed to a Florida Supreme Court Approved Family Law Form, as requested by the Family Law Rules Committee.” In the last paragraph on page 5, the Supreme Court further states: “Our intent is to ensure that form 12.928, as adopted herein, is filed in all cases under the Florida Family Law Rules of Procedure or the Florida Rules of Juvenile Procedure.” As of December 2009, the Court has not adopted a rule that requires the family court cover sheet be filed in delinquency and dependency cases. However, the opinion in Case No. SC08-1141 indicates the intention of the Court to have the family court cover sheet filed in all cases that fall under the definition of family and juvenile cases. That approach will facilitate the clerk’s responsibility to report judicial workload data pursuant to section 25.075, Florida Statutes.
4. Form 1.997 – Civil Cover Sheet. Again, you may want to refer to new 2010 Circuit Civil instructions that update the 2002 SRS Manual and that are available online at http://www.flcourts.org/gen_public/pubs/srsmanual.shtml. These instructions include definitions of the new case types on the cover sheets. We believe that the new case types listed on the cover sheet may generate questions from the clerks to the judges during hearings. This is also true for foreclosure cases when the clerk needs to make sure that they have the valuation information on

the final judgment to determine if a refund needs to be given or additional fees need to be charged.

I hope that these circuit civil and circuit family forms and SRS 2010 instructions will be helpful to you and your staff. If you have any comments or questions regarding this information please contact Ms. Miriam Jugger, Senior Court Analyst I in the OSCA Court Services office, by e-mail (juggerm@flcourts.org) or phone (850-410-1888).

Thank you for your time, cooperation, and commitment.

LG:MJ:dgh

cc: Chief Judges of the Circuit Courts
Trial Court Administrators

Jenn C. Lussier

From: Debbie Howells <howellsd@flcourts.org>
Sent: Wednesday, December 30, 2009 4:17 PM
To: Darren K. Jackson
Subject: Cases Involving Complex Civil Litigation




Office of the State Courts Administrator

Phone: (850) 922-5081 Fax: (850) 488-0156
e-mail: osca@flcourts.org

M E M O R A N D U M

TO: All Circuit Court Judges
All County Court Judges

FROM: Lisa Goodner 

DATE: December 30, 2009

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