

Update On Opinions Issued By the Commission On Ethics

by Mary Helen Farris

CEO 08-1:

A city councilman was not presented with a voting conflict under Section 112.3143(3)(a), Florida Statutes, regarding a measure concerning the city's relinquishment of an outfall easement to a development within seven hundred and fifty feet of the councilman's property. Under the circumstances presented, there is no voting conflict where he is called upon to vote on matters affecting a developer with which, as a result of personal civil litigation, he has a confidential settle-

ment agreement. Additionally, under the circumstances the settlement agreement is not prohibited by Section 112.313(7)(a), Florida Statutes.

CEO 08-03:

Appointed and *ex officio* members of the board of directors of a regional workforce development board are not subject to the financial disclosure provisions in Section 112.3145, Florida Statutes. The statute which authorized the creation of regional workforce boards does not impose

financial disclosure on regional workforce development board members, and as a private, nonprofit corporation, the board is not a local government entity that can utilize the "local option" provision in Section 112.3145(1)(a)2.g., Florida Statutes, to impose the requirement on itself through its by-laws.

CEO 08-04:

A prohibited conflict of interest exists under Sections 112.313(3) and 112.313(7)(a), Florida Statutes, where

See "Update on Opinions" page 7

A Call to Pre-Suit Mediation in These "Worst of Times"

by Sandra C. Upchurch, Mediation Counsel, Upchurch Watson White & Max

The passage of Property Tax Amendment 1 in January, 2008 sent most local governments scrambling to make significant budget cuts. Services are being reduced, staffing levels are being lowered and even routine purchases are being scrutinized just to name a few of the impacts. As local governments are required to turn the magnifying glass on themselves to make the numbers work, how litigation is handled should not be overlooked as a potentially significant

cost-saving measure. Litigation is costly and unpredictable, two factors that are simply unacceptable post-Amendment 1.

One way to most effectively avoid the costs and unpredictability of litigation is to engage in pre-suit mediation. Often-times, pre-suit mediation is not considered because no party feels the pressure or anxiety which comes with a pending Motion for Summary Judgment, and no party feels threatened by a looming and

See "Pre-Suit," page 10

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Drafting Agreements for Local Governments

by Hank Ennis, Managing Attorney, Hillsborough County Attorney's Office

When drafting agreements for local government entities in Florida, several unique issues must be addressed. Many new government attorneys moving from private practice fail to realize the distinctive nature of governmental contracting and the statutory and regulatory restrictions.

First, dealing with the issue of indemnification, historically, local government entities were restricted in their ability to indemnify the other party in contract for the local government's negligence and the contracting parties' negligence. Such provisions were considered unfunded liabilities which could not be quantified implicating the taxing authority of the local government in violation of the State Constitution. Additionally, for political subdivisions of the state, section 768.28, Florida Statutes, limited the political subdivision's liability to the amounts allowed in the statute. However, this restriction appears to have eroded. The Florida Supreme Court ruled in American Home Assurance Company v. National Railroad Passenger Corporation, 908 So.2d 459 (Fla. 2005) that the sovereign immunity protections of section 768.28, Florida Statutes do not protect a municipality in a contractual arrangement where the municipality has agreed, without limitation, to indemnify the other party for the municipality's negligence and the

negligence of the contracting party. Further, the Supreme Court's analysis does not appear to be limited to municipalities.

Another issue that is overlooked by many new government attorneys is whether the government may contract beyond the fiscal year of the government agency's existing budget. As a matter of law, many government entities can only contract for services which occur during the existing fiscal year. Contracting beyond the fiscal year may be a violation of Article VII, Section 10, of the State Constitution which reads in pertinent part as follows:

Neither the state nor any county, school district, municipality, special district, or agency or any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person....

For counties, Florida Statutes prohibit a board of county commissioners of a county to expend or contract for an expenditure more than the amount budgeted in the current fiscal year. Such actions may cause personal liability for the board of county commissioners. See section 129.07, Florida Statutes.

(There are many factual situations associated with this concept of law of which the drafting attorney must be

aware which may influence this prohibition. It is important that the attorney analyze the existing Attorney General Opinions and case law with the facts the attorney is dealing with to determine the applicability.)

To prevent public money being used for an unlawful purpose, a provision protecting the pre-audit of each expenditure should be included within each contract. This can be accomplished by structuring contractual payments to be made on a reimbursement basis. As invoices are received, the government entity can determine if the money was spent appropriately and lawfully. Within the county structure, the clerk of the circuit court of each county pays each disbursement and performs a "pre-audit review of the disbursement in order to be sure that the funds will not be used for an unlawful purpose." Alachua County v. Powers, 351 So.2d 32 (Fla. 1977.) Section 28.235, Florida Statutes, however, allows the clerk of the court to make advance payments on behalf of a county only when such payments are consistent with the rules and procedures adopted by the Chief Financial Officer of the State of Florida.

Another provision to consider when drafting government contracts is the Public Entity Crime statement. A public entity as defined in section 287.133 (1) (f), Florida Statutes, cannot award a contract to or transact business with anyone who has been listed on the convicted vendor list as compiled by the State Department of Management Services. Section 287.133(3) (a), Florida Statutes, requires that certain contracts contain a statement informing persons of this prohibition.

Regarding interlocal agreements between government entities, an unusual condition relating to interlocal agreements pursuant to Chapter 163, Florida Statutes, requires that before an interlocal agreement becomes effective, the interlocal agreement must be filed with the clerk of the circuit court of each county where a party to

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the agreement is located. See section 163.01(11), Florida Statutes.

The payment of goods and services by a local government entity is also controlled by time frames provided for in Florida Statutes. Any contractual arrangement which varies from the payment time frames found in the Local Government Prompt Payment Act, sections 218.70-218.79, Florida Statutes, may be unenforceable.

Government agencies also cannot pay additional compensation for services which have already been rendered and paid for. Pursuant to section 215.425, Florida Statutes, "no extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made..." Extra compensation generally refers to an additional payment for services performed or compensation over and above that fixed by contract or by

law when the services are rendered. Therefore, any retroactive compensation not provided for by contract may not be enforceable. See Florida Attorney General Opinion 03-55.

Additional contract language which may be beneficial to government entities is a provision requiring the maintenance of records by the contractor. Governments routinely perform audits when warranted and it is beneficial to the auditor if the contractor has maintained records of the services performed to verify expenditures.

As local government lawyers know, local governments are subject to the public records law. However, most contractors who contract with local governments are not necessarily aware of such requirement. Therefore, to prevent confusion, it is advisable to include a provision stating that the contractor shall comply with

the requirements of Chapter 119, Florida Statutes, with respect to any documents, papers and records made or received by the contractor in connection with the agreement.

Who can execute the contract by the local government is also an issue to address when drafting an agreement. Each entity has its authorized officer or officers who can bind the jurisdiction.

And, finally, local governments can only spend money on what is considered a "public purpose." This threshold question must be asked before a contract is drafted. A few of the many examples of what does and what does not constitute a public purpose are included for your review. See City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla. 1983); Poe v. Hillsborough County, 695 So.2d 672 (Fla. 1997); Sebring Airport Auth. v. McIntyre, 783 So.2d 238 (Fla. 2001.)

2008-2009 Calendar of Events

EXECUTIVE COUNCIL SCHEDULE

May 7, 2009

The Ritz Carlton Grande Lakes Resort
Orlando



SEMINAR SCHEDULE

**City, County and Local Government Law,
Sunshine Law, Public Records,
and Ethics Seminar**

February 6, 2009
Tallahassee

CCLG Certification Review Course 2009

May 7, 2009
The Ritz Carlton Grande Lakes Resort
Orlando

Public Finance 2009

May 7, 2009
The Ritz Carlton Grande Lakes Resort
Orlando

32nd Annual Local Government Law in Florida

May 8-9, 2009
The Ritz Carlton Grande Lakes Resort
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MEMORANDUM

January 9, 2009

To: City, County and Local Government Law Section Members and Affiliates
From: H. Hamilton "Chip" Rice, Jr., Chair, Marsicano Award Committee
Re: Ralph A. Marsicano Award

As you know, the Ralph A. Marsicano Award has been the most coveted and respected award presented by our Section to an individual who over a period of time has made significant and outstanding contributions to the development of Local Government in Florida.

The Ralph A. Marsicano Award Committee is soliciting nominations for the 2009 Marsicano Award.

Past recipients of the Ralph A. Marsicano Award are:

Ralph A. Marsicano	1976	William J. Roberts	1992
Paul S. Buchman	1977	Paul J. Marino	1993
Osee R. Fagan	1978	Alan C. Sundberg	1994
Richard E. Nelson	1979	Marion J. Radson	1995
No Award Given	1980	Sharon L. Cruz	1996
David E. Cardwell	1981	H. Hamilton Rice, Jr.	1997
James L. Watt	1982	Susan H. Churuti	1998
Robert L. Nabors	1983	Michael K. Grogan	1999
Claude L. Mullis	1984	Joni Armstrong Coffey	2000
Harry A. Stewart	1985	M. Julianne Scales	2001
Samuel S. Goren	1986	Harry Morrison, Jr.	2002
John J. Copelan, Jr.	1987	Emeline Acton	2003
John-Edward Alley	1988	Frederick B. Karl	2004
Susan F. Delegal	1989	Robert Ginsburg	2005
James R. Wolf	1990	J.J. Brown	2006
Herbert W.A. Thiele	1991	Theodore C. Taub	2007
		George F. Knox	2008

In order to assure the Section, acting through the Executive Council and the Ralph A. Marsicano Award Committee, that the very best nominations are received within the time frames provided in the bylaws, we recommend that you forward to us your nominee, along with a brief statement of the nominee's contributions to Local Government Law and to the Bar and the public generally. It is not necessary that this take any form and the nomination may be made with a minimum of biographical information, which can subsequently be pursued.

Nominees must be a member of The Florida Bar but need not be a member of the City, County and Local Government Law Section but, of course, those who have shown the dedication and interest by being members of the Section will be given every consideration as well.

Nominations must be forwarded to the City, County and Local Government Law Section liaison, Ricky Libbert, at The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300 by April 1. Copies may be sent to the Chair of the Ralph A. Marsicano Award Committee, H. Hamilton Rice, Jr., of Lewis, Longman & Walker, 1001 3rd Avenue West, Suite 670, Bradenton, Florida 34205.

We appreciate your consideration of this request.



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The Florida Bar Continuing Legal Education Committee and the
City, County and Local Government Law Section present

Sunshine Law, Public Records, and Ethics Seminar

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

One Location: February 6, 2009

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Course No. 0813R

8:00 a.m. – 8:20 a.m.

Late Registration

8:20 a.m. – 8:35 a.m.

Welcome/Opening Remarks

8:35 a.m. – 10:05 a.m.

Sunshine Law Overview

*Barbara Petersen, President, First Amendment Foundation,
Tallahassee*

10:05 a.m. – 10:20 a.m.

Break

10:20 a.m. – 11:50 a.m.

Public Records Law Overview

*Patricia Gleason, Director of Cabinet Affairs and Special
Counsel, Tallahassee*

11:50 a.m. – 1:00 p.m.

Lunch (included in registration fee)

1:00 p.m. – 1:50 p.m.

Ethics Commission: Processes and Procedures

Ethics: Revolving Door Standards

Philip Claypool, Florida Commission on Ethics, Tallahassee

1:50 p.m. – 2:40 p.m.

Ethics: Reporting, Financial Disclosure and Other Standards

*Julia Cobb Costas, Florida Commission on Ethics,
Tallahassee*

2:40 p.m. – 2:55 p.m.

Break

2:55 p.m. – 3:45 p.m.

Ethics: Conflicts of Interest & Voting Conflicts

Chris Anderson, Florida Commission on Ethics, Tallahassee

3:45 p.m. – 4:35 p.m.

Ethics: Gifts

Virindia Doss, Florida Commission on Ethics, Tallahassee

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Register me for the "Sunshine Law Public Records and Ethics Seminar" Seminar

ONE LOCATION: (003) UNIVERSITY CENTER CLUB, TALLAHASSEE (FEBRUARY 6, 2009)

TO REGISTER OR ORDER AUDIO CD OR COURSE BOOKS, BY MAIL, SEND THIS FORM TO: The Florida Bar, CLE Programs, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON-SITE REGISTRATION, ADD \$25.00. **On-site registration is by check only.**

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RTL: Course No. 0813R

REGISTRATION FEE (CHECK ONE):

- Member of the City, County and Local Government Law Section: \$215
- Non-section member: \$240
- Full-time law college faculty or full-time law student: \$140
- Persons attending under the policy of fee waivers: \$40
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Enclosed is my separate check in the amount of \$25 to join the City, County and Local Government Law Section. Membership expires June 30, 2009.

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TOTAL \$ _____

UPDATE ON OPINIONS

from page 1

a county commissioner serves as a director of a bank contracting with the county regarding a housing program. Under Section 112.313(3), the commissioner acted in his official capacity to purchase services from a business entity of which he is a director and he acted in a private capacity to sell services to the county, his political subdivision. Under Section 112.313(7)(a), the commissioner holds employment or a contractual relationship with the bank, a business entity doing business with his public agency under the contract or agreement between the county and the bank. In addition, a voting conflict of interest was created when the county commissioner voted to approve his bank for entry into the agreement with the county. No definitive answer can be provided regarding whether a prohibited conflict would be created under Sections 112.313(3) and 112.313(7)(a) based on the commissioner's service as an unpaid director of various philanthropic organizations; the commissioner is invited to submit particular scenarios for review, should such arise. But no voting conflict would be created regarding votes/measures affecting the philanthropic organizations because they are not principals by whom the commissioner is "retained." Other directors of the bank's board of directors are not, by virtue of being directors, "business associates" of the commissioner regarding the voting conflicts law.

CEO 08-05:

A prohibited conflict of interest would be created under Section 112.313(7)(a), Florida Statutes, were an employee of a shipping agent to be elected to and become a member of a port authority. The interests of his employer would be regulated by the port authority and a continuing or frequently recurring conflict of interest or an impediment to the full and faithful discharge of public duty would exist because of his simultaneous private/public interests regarding his employer's coordination of the logistical aspects of the entry and exit of ships into the port and because of his employer's complicated business involvements at the port.

CEO 08-06:

A prohibited conflict of interest does not exist under Section 112.313(7)(a), Florida Statutes, where a member of a city commission is employed by a sheriff's office providing law enforcement services to the city under an agreement entered into and amended before the member took office. Under the circumstances presented and subject to the condition that the member's employment is not connected to her employer's provision of services to the city, a prohibited conflict would not be created were the city and the sheriff's office to contract anew. The existing agreement is grandfathered, intergovernmental agreements rarely constitute "doing business," and no frequently recurring conflict or impediment to the full and faithful discharge of the member's public duties is indicated.

CEO 08-07:

No prohibited conflict of interest would be created under Section 112.313(7)(a), Florida Statutes, were a County Commission member to have an ownership interest in, and serve as president of, limited liability companies providing marketing, sales, and title services to developers in the County. The Commissioner would be required to abstain from voting on issues which would inure to the special private gain or loss of developers or landowners contracting with his companies.

CEO 08-08:

Absent a renewal or extension of a contract with the county, an engineer's firm's work related to the contract will be "grandfathered," and thus not prohibitively conflicting, under Sections 112.313(3) and 112.313(7)(a), Florida Statutes, should the engineer become a member of the county commission.

Absent an exemption, a prohibited conflict of interest would be created under Sections 112.313(3) and 112.313(7)(a) were his firm to contract with the county, and a prohibited conflict would be created under Section 112.313(7)(a) were his firm to contract with another company contracting with the county if his firm's business with the other company is conducted under his professional licensure. No frequently recurring conflict or impediment to the full and faithful discharge of his public duties under the second part of Section 112.313(7)(a) would be created were his firm to work on some types of private sector projects in the county; but it would be conflicting for him or a member of his firm to represent a client before the county commission.

CEO 08-10:

A prohibited conflict of interest would not be created for a county property appraiser under Sections 112.313(3) or 112.313(7)(a), Florida Statutes, were he to provide private consulting services outside his county, provided that no person or entity involved with his provision of consulting services simultaneously does business with his public office or his county. Also, under the circumstances presented, a prohibited conflict was not created for the property appraiser under Sections 112.313(3), 112.313(7)(a), or 112.313(8), Florida Statutes, where he provided private consulting services outside his county.

CEO 08-11:

A voting conflict does not exist under Section 112.3143(3)(a), Florida Statutes, regarding city council measures affecting clients of an attorney against whom a city councilmember has made a criminal complaint and,

continued. . .

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UPDATE ON OPINIONS

from page 7

under the facts presented, it appears that the member would not be permitted to abstain from voting under Section 286.012, Florida Statutes. Neither the attorney nor her clients (the persons or entities affected by the measures) would stand in a relationship to the councilmember enumerated under Section 112.3143(3)(a), or in a similar relationship to the councilmember, and the councilmember's economic, financial, or similar interests would not be affected.

CEO 08-12:

Under the circumstances presented, a school board member would not be presented with a voting conflict regarding measures affecting an architectural firm, an owner of which co-owns with his wife a residence leased, with an option to purchase, as the residence of the member and her husband. Under the circumstances presented, the votes/measures would not affect the member or her husband (relative) and "landlord" is not a relationship enumerated in Section 112.3143, Florida Statutes. The situation presented is indicative of a fair market value, arms-length transaction made by the owners of the property for the purpose of leasing/selling the property; it does not indicate that the transaction was intended to influence the member in her official capacity toward the firm. No prohibited conflict under either the first or second parts of Section 112.313(7)(a), Florida Statutes, is indicated, under the facts presented.

CEO 08-15:

A prohibited conflict of interest would be created under Sections 112.313(3) and 112.313(7)(a), Florida Statutes, were an employee (executive director/general counsel) of a health facilities authority to provide legal services (bond issuer's counsel services), via her private law practice, to the authority. The public employee would be acting in a private capacity to sell services to her agency and she would hold employment or a contractual relationship with a business entity (her firm) doing business with her agency. However, a prohibited conflict would not be created under either statute

were the employee to perform issuer's counsel services in her capacity as an authority employee.

CEO 08-16:

Under the circumstances presented, a prohibited conflict of interest would not be created under Section 112.313(7)(a), Florida Statutes, were a city police officer to own and operate a business locating items of property (collateral) for lenders or agents of lenders; nor would a prohibited conflict be created were the business to recover the property. The lack of need for law-enforcement-sourced information to locate the property, no use of law enforcement uniforms or equipment in conducting the business, the business's clients waiving confidentiality under Section 493.6119, Florida Statutes, to further the officer's duty to report crime if encountered via his business, and the business's not having clients who do business with or who have a relationship with the police department, all support a lack of conflict and harmonize the existing situation with prior Commission on Ethics opinions.

CEO 08-17:

An employee of the Florida Department of Transportation would not be prohibited from accepting employment with an independent contractor responsible for maintaining certain Department assets, because her involvement with the contract was not "substantial," nor would the salary she would receive be limited under Section 112.3185, Florida Statutes.

CEO 08-18:

A former employee of the Florida Turnpike Enterprise who obtained employment with an independent contractor doing business with both the Florida Department of Transportation and the Florida Turnpike Enterprise is prohibited from "representing" her private sector employer before the Florida Turnpike Enterprise, but not the entire Florida Department of Transportation under Section 112.313(9)(a)4, Florida Statutes.

CEO 08-22:

No conflict of interest would be created under Section 112.313(7), Florida Statutes, where a Town Commission member also serves as an uncompensated member of a volunteer fire department contracting with the Town.

Nor would any voting conflict exist where the member, in addition to being uncompensated, is not an officer or director of the department, and the measure being voted on would not inure to his own special private gain or loss. No prohibited conflict of interest is created by the Commissioner's membership in a political action committee, where he is not an officer or director of the organization, and there is no litigation or other relationship between the committee and the Town.

CEO 08-23:

A prohibited conflict of interest would not be created under Section 112.313(7)(a), Florida Statutes, were a corporation of a member of a county public transportation commission to rent limousine service from companies regulated by the commission. Under the first part of the statute, the corporation, rather than the member, would hold a contractual relationship with the regulated companies; under the second part, the situation presented does not indicate a continuing or frequently recurring conflict or an impediment to the full and faithful discharge of the member's public duties. Further, the exemption of Section 112.313(12)(j), Florida Statutes, would not be applicable to the situation.

CEO 08-24:

No voting conflict would be created under Section 112.3143(3)(a), Florida Statutes, were a member of a city council to vote on a measure to appoint a person as mayor, where the member is an applicant for the appointment. The vote would affect the public interest of the city (a public entity) and any gain or loss to the member would not be prohibited because of Section 112.313(5), Florida Statutes.

CEO 08-25:

No voting conflict would be created under Section 112.3143(3)(a), Florida Statutes, were a member of a town council to vote on a measure to appoint an interim council member, where the member is an applicant for the appointment. The vote would affect the public interest of the town (a public entity) and any gain or loss to the member would not be prohibited because of Section 112.313(5), Florida Statutes.

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KEY TO ABBREVIATIONS - CERTIFICATION CREDIT HOURS

AD = Admiralty and Maritime	ED = Elder Law
AG = State & Federal Government & Admin. Practice	EP = Wills, Trusts, & Estates
AP = Appellate Practice	FL = Marital & Family Law
AT = Antitrust & Trust Regulation	HL = Health Law
AV = Aviation	IL = International Law
BL = Business Litigation	IP = Intellectual Property
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CC = City, County, Local Government	LE = Labor & Employment
CL = Construction Law	RE = Real Estate
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Revised 12/18/2008

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PRE-SUIT

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ominous trial date. Although these external motivators for settling cases may not exist pre-suit there are an equal number of internal motivators which are often overlooked and warrant consideration when contemplating pre-suit mediation.

Cut Costs

Money is the ultimate motivator, and pre-suit mediation simply makes good economic sense. "The earlier a case can be resolved, the greater the cost/benefit ratio for both sides."¹ Parties that have not engaged in the lengthy discovery process can consider using those unexpended funds toward resolving the case rather than engaging in discovery - perhaps allowing a pre-suit offer to be greater than what could be considered once litigation is commenced or a party to accept a lower offer because out-of-pocket expenditures are limited. Resources that would otherwise be used to conduct discovery, prepare for trial and try the case can be used instead to resolve the dispute.²

Reduce Emotional Baggage

Emotions are probably the sec-

ond most important motivator. Emotions often run high in litigation. This emotional factor can be significantly reduced, although not eliminated entirely, when parties agree to engage in pre-suit mediations. We have all participated in depositions with our client wincing beside us at every word the deponent is uttering. Those emotional flare-ups are certainly a natural result of hearing something which is unpleasant or distasteful. The sting of hearing the other party's position does not usually fade with time and often leads a party to be less inclined to deal reasonably and rationally with the other party.

Pre-suit mediation can allow parties to negotiate without the posturing and resistance the discovery process can create.

Save Time

Time is another factor. Litigation is a long, arduous process. Once parties have invested substantial amounts of time sitting through multiple attorney conferences and depositions and crafting responses to lengthy interrogatories and repeated requests to produce, their positions harden and their perceptions regarding the strength of their case becomes engrained and hardened. This is when expectations can soar and become unreasonable. And, it is why we oc-

asionally encounter the attorney at mediation who needs the mediator to focus the clients on realistic resolution of the matter. At pre-suit mediation negotiations are initiated early enough that the parties' resolve is often not solidified and openness to cooperation and compromise still exists.

Time is also a consideration because of the delay which comes with litigation. As court budgets are tightening, hearing times and trial dates are harder and harder to come by. Many clients are confused by the time it takes to resolve a case from the date of filing to Final Judgment. Pre-suit mediation allows parties to retain or regain control of their calendars.

Public Records Law Affords Early Discovery

Finally, some shy away from pre-suit mediation because of the perceived inability to prepare a case prior to initiating a lawsuit. However, in the government sector the discovery process need not await the filing of a lawsuit. Governmental entities in Florida are subject to Florida's Public Records Law. The material which would be obtained through the discovery process can often be obtained pre-suit with public records requests.

The Bottom Line

The time is right to give pre-suit mediation a chance. Your governmental clients will appreciate the opportunity to resolve the matter early on and less expensively. Your individual clients will appreciate the opportunity to resolve the matter early on at little cost to them financially or emotionally. For all clients, pre-suit mediation gives them a much-needed measure of control, both in terms of time and resources. Pre-suit mediation, even if unsuccessful, is a useful pre-suit strategy to narrow issues and get a first glimpse of the other party's case.³

Endnotes

¹ Clelland, Ted, "Pre-suit Mediation; Good Economics?," May 13, 2008, adrted.com, accessed September 12, 2008, <http://adrted.com/articles.htm>.

² Florida Mediation and Arbitration LLC, "Pre Suit Mediation," floridamediator-arbitrator-umpire.com, accessed September 12, 2008, <http://floridamediator-arbitrator-umpire.com/PreSuitMediation.html>.

³ Id.

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