

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR MANATEE COUNTY, FLORIDA

MARY LOU SMITH, an individual,  
and SHARON DENSON, an individual,

Plaintiffs,

v.

CASE NO. 08 CA 11315

TRAILER ESTATES PARK AND  
RECREATION DISTRICT,  
an independent special taxing district,  
JANET JONES, an individual,  
JOHN VANDER MOLEN, an individual,  
JOSEPH SALERNO, an individual, and  
MARY LOU McNULTY, an individual,

Defendants.

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**TRAILER ESTATES'S MEMORANDUM IN OPPOSITION TO  
MOTION IN LIMINE REGARDING SEQUESTRATION OF WITNESSES**

Defendant Trailer Estates Park and Recreation District ("Trailer Estates") opposes Plaintiffs' September 22, 2010, Motion In Limine Regarding Sequestration Of Witnesses and states:

***TRAILER ESTATES ADDRESSED, AND BELIEVED IT HAD RESOLVED, THE  
SEQUESTRATION OF JENNIFER COWAN AND OTHER ATTORNEY WITNESSES IN  
THIS ACTION MORE THAN A YEAR AGO***

On August 4, 2009, Tom Shults, Esq., sent a letter to Kevin Hennessy, Esq., and Jennifer Cowan, Esq. In this letter (Exhibit "A"), Mr. Shults notified opposing counsel that Trailer Estates would "invoke the Rule of Sequestration of witnesses during the trial." Mr. Shults noted that he would ask that Ms. Cowan, as a witness in the case, "be excluded from the courtroom during the trial except when she testifies." Mr. Shults concluded that he "wanted to give ... advance notice on this point so you can plan accordingly."

On September 3, 2009, Kevin Hennessy sent Tom Shults an e-mail (Exhibit "B") which again addressed Ms. Cowan's sequestration. In paragraph 6 of this e-mail, Mr. Hennessy stated, "Do you intend to move to recuse Jennifer Cowan? If so I will make the same motion as to Mark Barnebey and Scott Rudacille. Alternatively, I believe we should work out a stipulation regarding the presentation of their testimony."

Mr. Shults responded the next morning as follows (Exhibit "B," responses within Mr. Hennessy's e-mail):

Do you intend to move to recuse Jennifer Cowan? *Yes.*

If so I will make the same motion as to Mark Barnebey and Scott Rudacille. *I agree that they will be sequestered as well.*

Alternatively, I believe we should work out a stipulation regarding the presentation of their testimony. *Both Mark and TJ Miller will be unavailable after Wednesday 9/16/09. If you call them, I suggest that the Defendants be permitted to ask them whatever questions they would otherwise be asked during the Defendants case, or that they be called out of order by the Defendants before cob 9/16/09.*

Notwithstanding the foregoing notice and implicit agreement on the sequestration of all the attorney witnesses in this action, Plaintiffs now seek, on the eve of trial, that the Court grant an exception to the rule of sequestration and allow attorney Jennifer Cowan and paralegal Melanie Marken to remain in the courtroom during the trial.

***NEITHER MS. COWAN NOR MS. MARKEN ARE ESSENTIAL TO THE PLAINTIFFS' CASE AND BOTH SHOULD BE SEQUESTERED DURING THE TRIAL WITH ALL OF THE OTHER ATTORNEY AND LAY WITNESSES***

Florida Statute, §90.616, provides, subject to four limited exceptions, that witnesses must be excluded from a proceeding so that they cannot hear the testimony of other witnesses.

*Hernandez v. State*, 4 So. 3d 642, 662 (Fla. 2006)(finding witness sequestration to be available as a matter of right). One exception to this rule is where the witness is a "person whose presence is

shown by the party's attorney to be essential to the presentation of the party's cause."

§90.616(2)(c), Fla. Stat.

To be "essential" and avoid sequestration, a witness must have "such specialized knowledge or intimate knowledge of the facts of the case that a party's attorney could not effectively function without the presence and aid of the witness." *Goodman v. W. Coast Brace & Limb, Inc.*, 580 So. 2d 193, 195 (Fla. 2d DCA 1991) (citing, incorrectly, *Oliver B. Cannon and Son Inc., v. Fidelity and Casualty Co. of New York*, 519 F. Supp. 668, 678 (D. Del. 1981)).

The party requesting that a witness be permitted to stay in the courtroom has the burden to prove why the presence of the witness is essential. *Hernandez*, 4 So. 3d at 662.

#### ***Sequestration Of Paralegal Marken***

Although Ms. Marken's testimony might be necessary for the prosecution of a portion of the Plaintiffs' cause of action; the test is whether her *presence* is essential to provide Plaintiffs' counsel with advice and assistance throughout the trial of this matter.

For example, in *Goodman v. W. Coast Brace & Limb, Inc.*, 580 So. 2d 193 (Fla. 2d DCA 1991), Mr. Goodman brought a product liability action against West Coast Brace & Limb, Inc. Mr. Goodman subsequently filed a bankruptcy petition and the bankruptcy trustee was substituted as the party plaintiff. At trial, West Coast invoked the rule and Mr. Goodman was excluded from the trial even though the bankruptcy trustee did not attend the trial and plaintiff's counsel was left alone at counsel table. In reversing the defense verdict, the appellate court ruled that Mr. Goodman should have been permitted to stay in the courtroom because he was "the real party in interest" and was "the *only* individual with intimate knowledge of the facts in the underlying personal injury action." 580 So. 2d at 195 (emphasis added).

Unlike the situation in *Goodman*, Ms. Marken is not the real party in interest. Ms.

Marken is not the only individual with intimate knowledge of the facts in the lawsuit. This case does not involve a personal injury or personal wrong done to Ms. Marken. Both of the Plaintiffs, Mary Lou Smith and Sharon Denson, will be present at counsel's table for trial. Both Plaintiffs have intimate knowledge of the facts underlying this action and, also, all of the facts and circumstances of the litigation as Ms. Smith's husband tracks and rapidly obtains and posts every court paper and event on his Trailer Estates themed website.

Ms. Marken is a paralegal who acted and continues to act under the direction and supervision of Attorney Hennessy. As a Florida Registered Paralegal, Ms. Marken only provides services for an attorney and in the representation of a client where "... the attorney ... maintains control of all client matters; the attorney supervises the paralegal; ... and the services performed supplement, merge with, and become the attorney's work product." Rule 20-7.1(e). Whatever Ms. Marken has done has been within Mr. Hennessy's or one of his associates' responsibilities. In light of Mr. Hennessy's control and direction over Ms. Marken through the course of this litigation, it cannot be said that Ms. Marken is necessary for him to effectively function at the trial of this cause.

Ms. Marken has already transmitted her fact knowledge to Mr. Hennessy and his partner, Maggie Mooney-Portale, and she may continue until the trial to do so. In this action, Ms. Marken has prepared an affidavit and a chart of her document inspection activities at Trailer Estates and her reported results. Plaintiffs' counsel has Ms. Marken's deposition transcript. Ms. Marken is available to Attorneys Hennessy and Mooney-Portale through and until the start of the trial of this cause. Plaintiffs' counsel may obtain memoranda, statements, or whatever fact information they need from Ms. Marken through and until the start of the trial of this cause.

Plaintiffs' attorneys, not Ms. Marken, took all the depositions in this matter, attended all

the hearings, and are ultimately responsible for all the pleadings and other papers in this matter. If Plaintiffs' counsel does not know before the trial what their own staff paralegal knows, it is only because they have opted not to know. This case does not involve difficult subject matter: it is a Government-In-The-Sunshine and Public Records case; it is not a product liability or toxic tort case.

### *Sequestration Of Attorney Cowan*

Jennifer Cowan is not essential to the presentation of Plaintiffs' case. Ms. Cowan is a junior associate within Plaintiffs' law firm and she has not been continuously involved with this matter.

Mr. Hennessy has been and is the lead attorney for Plaintiffs. Mr. Hennessy has nearly 25 years of legal experience. According to his biography (Exhibit "C"), he is an "AV" rated attorney who "represents clients before all courts in Florida, including the Florida Supreme Court, the 11th Circuit U.S. Court of Appeals, the federal district courts, and the U.S. Supreme Court." A Westlaw search on September 23, 2010, revealed 11 reported decisions in which Mr. Hennessy was listed as an attorney of record. Mr. Hennessy does not need any assistance to try this action.<sup>1</sup>

Maggie Mooney-Portale was the senior associate and is now the junior partner involved in this action. Ms. Mooney-Portale appears on nearly every paper filed in this action for Plaintiffs: for example, Ms. Mooney-Portale appears on the pleading going to trial, the Third Amended Complaint, and on the Addenda to the Third Amended Complaint. Ms. Mooney-Portale was the attorney to whom plaintiff Mary Lou Smith corresponded at the beginning of this

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<sup>1</sup> Indeed, Zach Ross recalls Mr. Hennessy stating in opposition to the motion to continue the March 2010 trial of this action based upon Mr. Shults's illness, that Mr. Ross could try the action on his own. Mr. Hennessy has about six times the legal experience of Mr. Ross who graduated from law school in 2006.

matter (Exhibit “D”). Ms. Mooney-Portale authored the initial demand letter in this action. Ms. Mooney-Portale has nearly 10 years experience, including litigation experience in the Tampa office of a national firm. (Exhibit “E”) Ms. Mooney-Portale has attended public records requests at Trailer Estates. A Westlaw search on September 23, 2010, revealed one reported decision in which Ms. Mooney-Portale was involved as counsel of record. Ms. Mooney-Portale has more than twice the litigation experience of Ms. Cowan.

Ms. Cowan has less than five years experience practicing law, graduating from law school in 2006. The only court proceedings described on her firm biography with which she has been involved pertain to a guardian ad litem program. (Exhibit “F”) A Westlaw search on September 23, 2010, revealed no reported decisions where Ms. Cowan was an attorney of record.

Ms. Cowan has also not been continuously involved with this matter. Ms. Cowan was blessed with a child this year and was away from her office and this matter for, at least, three months of maternity leave. Thus, Mr. Hennessy has already had opportunity and reason to prepare for the trial of this matter without the help of the less experienced of his two colleagues. The presence of Ms. Cowan is certainly not *essential* to provide Mr. Hennessy and Ms. Mooney-Portale with advice and assistance throughout the trial of this matter.

Sequestration of Ms. Cowan is also supported by the case law involving attorney disqualification. Where, as here, a party seeks to call her own lawyer as a witness, disqualification of the lawyer is appropriate when it is shown that the lawyer will be an important witness in the case. For example, in *Larkin v. Pirthauer*, 700 So.2d 182, 183 (Fla. 4th DCA 1997), the attorney who prepared and witnessed a will disinheriting the decedent’s son was disqualified from representing the personal representative in an action to set aside the will “on the ground that [the attorney] would be a witness in the will contest.”

But, perhaps most persuasive in this regard is the case of *Fleitman v. McPherson*, 691 So. 2d 37 (Fla. 1st DCA 1997). In *Fleitman*, the attorney for defendants would “likely be a featured witness at trial” to testify about the plaintiff’s activities. *Id.* at 38. The appellate court reversed the trial court’s order denying a motion to disqualify the attorney insofar as it permitted the attorney to participate in the trial. The appellate court ruled that the lawyer “may participate in the representation up until the trial and after the trial, but may not participate as an attorney at trial, as it appears his testimony may become a feature of the proceedings.” *Id.*; *See also City of Lauderdale Lakes v. Enterprise Leasing Co.*, 654 So. 2d 645, 646 (Fla. 4th DCA 1995) (noting concession that attorney who was listed as a witness and expected to give substantive testimony at trial should be disqualified).

Whether it is through sequestration or disqualification, Ms. Cowan should not be permitted to remain in the courtroom during the trial of this action.

***PLAINTIFFS’ ARGUMENTS FOR APPLICATION OF THE “ESSENTIALITY”  
EXCEPTION TO SEQUESTRATION ARE UNPERSUASIVE***

Plaintiffs’ reliance upon the 1977 case of *Thompson v. Gross* as the “only” Florida case regarding the attempted sequestration of co-counsel who also testified as a witness is ill-founded. 353 So.2d 191 (Fla. 3d DCA 1977). The *Thompson* court provided no analysis of the facts and circumstances of the matter and merely stated that there was no abuse of discretion in the trial court’s decision to not exclude the testifying attorney from the trial. What Plaintiffs’ counsel states the appellate court may have “presumably” been thinking is irrelevant.

On the other hand and while also omitting analysis, the Second DCA, in *Liebreich v. Trial Strategies, Inc.*, 40 So.3d 1, 4 (Fla. 2d DCA 2010), reported a few months ago that a trial court had sequestered a party’s co-counsel:

The Estate responded to the adversary proceedings in pleadings

filed by Kennan Dandar. Luke Lirot also filed a notice of appearance for the Estate. When the adversary proceeding was finally ready to be tried in January 2006, Kennan Dandar appeared for trial with Mr. Lirot. Kennan Dandar insisted that he must “wear two hats,” as both the trial lawyer and the main witness for the Estate, but the trial court ordered him to leave the courtroom as a witness under sequestration.

Plaintiffs’ contention that the testimony of both Ms. Cowan and Ms. Marken is analogous to that of investigators who were not sequestered in *Knight v. State*, 746 So.2d 423 (Fla. 1998), and *Randolph v. State*, 463 So.2d 186 (Fla. 1984), is flawed.

The court in *Knight*, relying on the “unique facts,” found no abuse in the trial court’s discretion because the investigator was only testifying

as to what others had testified to two decades earlier, or as to what others had stated in sworn statements. Therefore, he was, in a sense, a reporter of what other individuals had long since said under oath in a recorded statement. His testimony was subject to being carefully checked by comparison to the transcripts of the trial testimony. Obviously, the prior statements of the individuals he was standing in for could not change based upon his presence during the testimony of the witnesses who preceded him.

746 So.2d at 430. Here and as described below in greater detail, both Ms. Cowan and Ms. Marken are expected to testify about their personal observations and involvement with Trailer Estates’s public records. Ms. Cowan and Ms. Marken intend to be far more than mere reporters, and, in fact, Ms. Cowan intends to be an advocate.

In *Randolph*, the detective was permitted to stay in the courtroom but his testimony was “limited to the fact that Randolph and Althea Glinton signed consent-to-search forms ... and to the fact that Ralph gave the detective a taped statement.” 463 So.2d at 191.

In contrast to both *Knight* and *Randolph*, Ms. Cowan and Ms. Marken are expected to testify to various substantive issues that form the basis of these claims.

According to Plaintiffs’ witness list, Ms. Cowan and Ms. Marken are expected to testify

broadly to “Sunshine Law and Public Record Law Violations.” Plaintiffs’ Supplemental Witness List, pg. 2, 5.

According to Ms. Cowan’s deposition, she is expected to testify to alleged Sunshine Law violations that occurred on January 22, 2009, including a discussion between two Trailer Estates’s Trustees. *See* Cowan Deposition, pp. 16-24. Ms. Cowan is also expected to testify to alleged Public Records Law violations involving a July 26, 2007, request, a December 12, 2008, request, and a January 8, 2009, request. *See* Cowan Deposition, pg. 35-45.

According to Ms. Marken’s deposition she will testify to alleged Sunshine Law violations that occurred on August 3, 2009, and April 27, 2010. *See* Marken Deposition, pp. 11-14. Ms. Marken is also expected to testify concerning a variety of alleged Public Records Law violations. *See* Marken Deposition, Exhibit 2.

Finally, *Rider v. State*, 724 So.2d 617 (Fla. 5<sup>th</sup> DCA 1999), which Plaintiffs cite for the proposition that the trial court has discretion to determine who might be excluded from the courtroom, does not involve the “essentiality” exception to the sequestration rule. In addition, it is a case where the trial court allowed a mother to stay in the courtroom with her sexually victimized 12 year old. *Rider* is simply inapposite.

#### ***PLAINTIFFS’ COUNSEL CREATED THIS SITUATION***

Plaintiffs’ counsel should not now be permitted to argue that two of their witnesses are excepted from the sequestration rule when, more than a year ago, Plaintiffs’ counsel knew that Trailer Estates would “invoke the rule” so as to exclude, among others, Ms. Cowan and Ms. Marken. Plaintiffs’ counsel knowingly and voluntarily created this situation. To allow Ms. Cowan and Ms. Marken to be excepted from the Rule would, essentially, render the Rule impotent as potential witnesses may simply become essential to the case through their own

preparation for trial.

Moreover, Trailer Estates has been preparing for the trial of this cause with the expectation that its law firm's only two City, County, and Local Government Law Board Certified attorneys, Mark Barnebey and Scott Rudacille, would be sequestered and prohibited from being present in the courtroom. Trailer Estates so prepared based upon the aforementioned communications between Mr. Shults and Mr. Hennessy.

***PLAINTIFFS' SUGGESTED CURE CURES NOTHING***

Although Plaintiffs suggest that sequestration is unnecessary because Ms. Cowan and Ms. Marken will be called as the first and second witnesses at trial, this is no cure to the problems the sequestration rule seeks to avoid.

First and foremost, Plaintiffs' "strategy" ignores the fact that Trailer Estates might call either one or both witnesses later in the case after other witnesses have testified. Indeed, Plaintiffs' counsel might want to re-call either one or both witnesses if there is something counsel missed during the initial examination or if there is something counsel wants to rebut after other witnesses have testified.

Second, sequestration also "involves preventing the prospective witnesses from consulting each other and preventing them from consulting a witness who has left the witness stand." C. Ehrhardt, §616.1 (2010 Edition). Ms. Cowan and Ms. Marken should be prevented from consulting with prospective witnesses during the trial so as to prevent these witnesses from changing their testimony in response to the testimony of other witnesses at trial. It is incongruous to contend that Mr. Hennessy and Ms. Mooney-Portale cannot effectively function without Ms. Cowan and Ms. Marken when neither should be permitted under a sequestration order from communicating with prospective witnesses.

***PLAINTIFFS' BALD ASSERTION OF LACK OF PREJUDICE IS INSUFFICIENT***

Plaintiffs make the unsupported contention in their motion that “the District will be unaffected if [Ms. Cowan and Ms. Marken] are not sequestered.” A bald assertion is certainly insufficient to carry Plaintiffs’ burden to demonstrate the applicability of an exception to the sequestration rule.

The assertion is also incorrect. Trailer Estates will be prejudiced if all witnesses in this action are not sequestered. The trial testimony of Ms. Cowan, Ms. Marken, and possibly others might be affected if the witnesses are not sequestered. Trailer Estates will also find itself at trial confronted by an advocate who, after also being a witness, might then continue testifying during questioning and while cross-examining witnesses from Trailer Estates who dispute her testimony.

In any event, it is not Trailer Estates’s burden to prove the negative inference that a witness might have testified differently if she was sequestered. “A strict prejudice requirement of this sort would be not only unduly harsh but also self-defeating, in that it would swallow a rule carefully designed to aid the truth-seeking process and preserve the durability and acceptability of verdicts.” *United States v. Farnham*, 791 F.2d 331 (4<sup>th</sup> Cir. 1986).

FOR ALL THE FOREGOING REASONS, Trailer Estates respectfully requests that the Court enter an order (a) denying the Motion In Limine Regarding Sequestration Of Witnesses, (b) sequestering all of the witnesses in this action and/or disqualifying the attorney witnesses from participating in the trial of this cause, and (c) granting Trailer Estates such further and additional relief as this cause and justice may require.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by ~~fax~~ <sup>hand</sup> delivery and U.S. Mail to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third

Avenue West, Suite 670, Bradenton, Florida 34205, on this 24<sup>th</sup> day of September, 2010.

**KIRK • PINKERTON, P.A.**

50 Central Avenue, Suite 700

Sarasota, FL 34236

Tel: (941) 364-2400

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By: 

Kurt E. Lee

Florida Bar No. 0983276

Zachary L. Ross

Florida Bar No. 0028351



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August 4, 2009  
Direct Dial (941) 364-2425  
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Via Facsimile and U.S. Mail  
Kevin Hennessy, Esquire  
Jennifer Cowan, Esquire  
Lewis, Longman & Walker, P.A.  
1001 Third Avenue West, Suite 670  
Bradenton, Florida 34205

Re: Mary Lou Smith and Sharon Denson v. Trailer Estates Park and Recreation District, et al./Case No. 08 CA 11315/Rule of Sequestration

Dear Kevin and Jennifer:

Trailer Estates, and likely your clients and the other parties, will invoke the Rule of Sequestration of witnesses during the trial. We and other parties have placed Jennifer Cowan on our witness list because it is foreseeable that she will be called as a witness during the trial. I know that both of you have been working on the case, however, given Jennifer's position as witness we will ask that she be excluded from the courtroom during the trial except when she testifies. I wanted to give you advance notice on this point so you can plan accordingly.

Should you have any questions, please do not hesitate to call me.

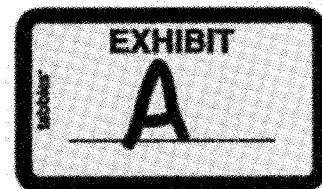
Very truly yours,

KIRK • PINKERTON, P.A.

THOMAS D. SHULTS

For the Firm

TDS :lam  
cc: Trailer Estates Park and Recreation District



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August 4, 2009

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James D. Dye, Esquire  
Hunter Carroll, Esquire  
Robert E. Turffs, Esquire  
Daniel E. Scott, Esquire

G:\DOCUMENT\TDS\Clients\Trailer Estates\Hennessy Cowan 02 letter.wpd

August 3, 2009

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bcc: Mark P. Barnebey, Esq.  
Scott Rudacille, Esq.

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To: Mark P. Barnebey, Esquire  
Scott E. Rudacille, Esquire

Date: August 5, 2009

Pages: (941) 744-9691

From: Thomas D. Shults, Esq.

Subject: Smith and Denson v. Trailer Estates Park et al.

COMMENTS:

\*\*\*\*\*

**IF YOU HAVE PROBLEMS RECEIVING THIS MESSAGE,  
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**Thomas Shults**

**Sent:** Friday, September 04, 2009 9:51 AM  
**To:** 'Kevin Hennessy '  
**Subject:** FW: Trailer Estates

**From:** Thomas Shults  
**Sent:** Friday, September 04, 2009 9:50 AM  
**To:** 'Kevin Hennessy '  
**Cc:** Hunter Carroll; 'turffsoffice@sarasotalawyers.com'; Dan Scott; 'James Dye'  
**Subject:** RE: Trailer Estates

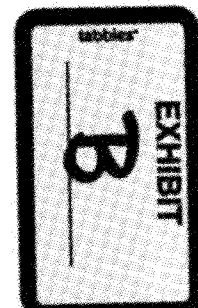
Kevin-see below.

**From:** Kevin Hennessy [mailto:khennessy@llw-law.com]  
**Sent:** Thursday, September 03, 2009 5:35 PM  
**To:** Thomas Shults  
**Cc:** Jennifer Cowan; Jennifer M. Davy  
**Subject:** Trailer Estates

Tom:

Regarding several matters:

1. When should I expect to see the proposed order from you for this morning's hearing? *Hopefully by noon.*
2. We currently have a meeting of counsel Tuesday to go over the exhibits. In light of today's rulings does it make more sense to have the meeting on Thursday after the Defendants have filed their answers? *I think we need to confer on Tuesday to exchange copies of exhibits and lists that we actually intend to introduce. I want copies of the exhibits (including video audio clips) that you actually intend to introduce, not thousands of pages of documents and dozens of hours of videos that you don't know whether you will introduce or not. I will provide you at the conference copies of my exhibits and lists. I suggest thereafter we set a phone conference (Thursday?) after we have a chance to review the exhibits, videos etc and go down the lists and stipulate as to admissibility or state objections and have that list ready for the court on Monday. I think this is the process contemplated by the Court. If anyone needs to supplement based on the new complaint they should be permitted to do that.*
3. What time Friday do you want to go to the courthouse to mark exhibits? Frankly we could mark them when we meet to review the exhibits. *I believe the Court wanted us to report early on Monday morning and have the clerk mark all exhibits so they are ready at 9am. What does everyone else understand?*
4. Are there any specific exhibits that you have a question about that you want to see or for me to copy or do you still want me to copy all of our exhibits? *See #2 above. I need copies of, as Hunter describes it, on your "get real" list that we will exchange Tuesday.*
5. I have read the case you cited to the Judge regarding reversible error, the case deals with an interlocutory appeal, are you intending to file an interlocutory appeal on the issue of the pleadings not being closed? *No determination at present.*
6. Do you intend to move to recuse Jennifer Cowan? *Yes. If so I will make the same motion as to Mark Barnebey and Scott Rudacille. I agree that they will be sequestered as well. Alternatively I*



9/4/2009

believe we should work out a stipulation regarding the presentation of their testimony. *Both Mark and TJ Miller will be unavailable after Wednesday 9/16/09. If you call them, I suggest that the Defendants be permitted to ask them whatever questions they would otherwise be asked during the Defendants case, or that they be called out of order by the Defendants before cob 9/16/09.*

I will prepare the initial stipulations regarding exhibits we discussed when we met in my office and should get that to counsel tomorrow.

Kevin

Kevin S. Hennessy, Esquire  
Lewis Longman & Walker, P.A.  
1001 3rd Ave. West, Suite 670  
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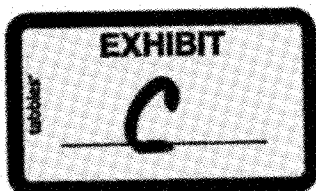
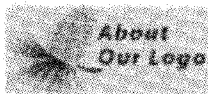
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## Kevin S. Hennessy

Shareholder  
Bradenton Office  
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[khennessy@llw-law.com](mailto:khennessy@llw-law.com)



### Areas of Practice

Environmental and Land Use Law, Civil Litigation & Appeals

- Has more than 20 years of experience representing clients in the negotiation and litigation of environmental permitting and enforcement issues, land development, coastal construction matters, water rights, hazardous waste, wetland issues, property rights and eminent domain.
- Represents clients before all courts in Florida, including the Florida Supreme Court, the 11th Circuit U.S. Court of Appeals, the federal district courts, and the U.S. Supreme Court.

### Professional, Civic and Community Involvement

- Martindale-Hubbell, AV Rating.
- Frequent lecturer on topics including coastal construction, water law, endangered species, administrative law and environmental litigation.
- American Bar Association, Section of Environment, Energy, and Resources, Member.
- The Florida Bar, Environmental and Land Use Section.
- Manatee County Bar Association, former Director.
- Manatee County School Board Budget Task Force, Member.
- Manatee County Chamber of Commerce, Member, Environmental Committee, "Green" Task Force.
- Natural Resource Leadership Institute Fellow.

### Publications & Presentations

- "What You Gonna Do when the Well Runs Dry: Protection of Rights to ASR Water", ABA Water Resources Committee Newsletter, Vol. 12, No. 2, by Kevin S. Hennessy, Esq. and R. David Jackson, Esq., January 2010.
- "Florida Coastal Construction Permitting", by Kevin S. Hennessy, Esq., updated by R. David Jackson, Esq., 2009.
- "Coastal Construction Below the Mean High-Water Line", The Florida Bar, February 2001.
- "Thirty-Year Erosion Zone", Florida Environmental and Land Use Law, by Kevin S. Hennessy, Esq., February 2001.
- "Aquifer Storage and Recovery", Vail Water Law Conference, 2010.
- Greenwashing: A Guide to the Ethical Advertising of Green Products", by Kevin S. Hennessy, Esq. and Michelle Diffenderfer, Esq., Manatee Chamber, 2009.
- "Extreme Environmental People Skills: An Introduction to Participatory Approaches to Natural Resource Dispute Resolution", Florida Chamber,

Environmental Permitting Summer School, 2009.

- "The Lower St. John's River Basin Management Action Plan: Assessing Agricultural, Local Government and Environmental Perspectives", by Tatiana Borisova, Laila Racevskis, Jennison Kipp, Debra Butler, Diana Ferguson, and Kevin Hennessy, NRLI Practicum Presentation, 2009.

## Education

- J.D., *cum laude*, University of Miami, 1986.
- B.A., Wake Forest University, 1983.

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**From:** Maggie D. Mooney <mmooney@llw-law.com>  
**To:** msmith0603@aol.com  
**Cc:** Jennifer Cowan <jcowan@llw-law.com>  
**Subject:** RE: Records  
**Date:** Mon, 20 Aug 2007 9:03 am

---

Got it. We will keep an eye out for any info. regarding this matter too. -Maggie

Maggie D. Mooney, Esq.  
[mmooney@llw-law.com](mailto:mmooney@llw-law.com)  
(941) 708-4040

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**From:** [msmith0603@aol.com](mailto:msmith0603@aol.com) [<mailto:msmith0603@aol.com>]  
**Sent:** Saturday, August 18, 2007 9:28 PM  
**To:** Maggie D. Mooney  
**Subject:** Records

Hi Maggie,

FYI - I am attaching a chronology of a current squabble in the park. We have another magically appearing letter.

John VanderMolen (who met with us), changed his mind about resigning from the ARC if appointed to the Board, after he was appointed. His second letter (rescinding his resignation) never was mentioned until Trustee Tom Featheringill put a motion forward to accept his letter of resignation. He passed the letter rescinding his motion out to the Trustees during the discussion portion of the motion. The letter had no office identification on it, to indicate when it was really written. At least three Trustees were never informed of the existence of the letter. Tom Featheringill has been demanding answers as to why the letter was never mentioned or presented to the Trustees until the motion was made to accept his resignation.

I have listed the correspondence that has gone back and forth over the past month, and briefly described the contents

I have most of the correspondence listed. It will be interesting if it is offered to you in the things you review. Tom F. has demanded that the issue be publicly dealt with at the Board meeting on Monday. Specifically, he is asking for a tracing of the path of the letter from the time it supposedly left John V's hand.

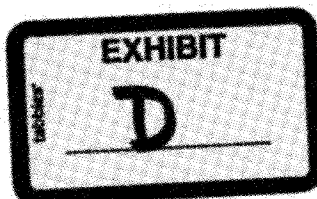
If Mr. Barnebey thinks he is making inroads with this Board, he is sorely mistaken, in my opinion.

Happy hunting!

Mary Lou

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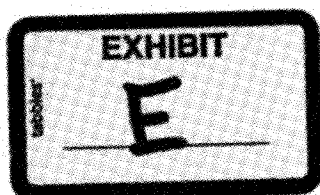
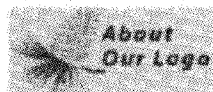
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## Maggie D. Mooney-Portale

Shareholder

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[mmooney-portale@llw-law.com](mailto:mmooney-portale@llw-law.com)

### Areas of Practice

Local Government & Special Districts, Civil Litigation & Appeals, and Administrative Law

- Represents local governments and special taxing districts as general and special counsel.
- Represents private and government clients before all courts in Florida, including all Florida federal district courts.
- Represents clients in matters concerning agency enforcement, permitting, water rights, hazardous waste, wetlands, coastal construction, and property rights.

### Prior Professional Experience

- Prior to joining the firm, worked for the Tampa office of a national firm defending clients in matters relating to professional malpractice, casualty, construction defects, toxic mold, fair debt, condominium law, homeowners associations, discrimination, indemnity and subrogation claims.
- During law school, worked as an intern at the Florida Department of Environmental Protection researching issues relating to permitting and administrative law.

### Professional, Civic and Community Involvement

- Florida Bar Association, Member.
- Admitted to practice before the United States District Court for the Northern, Middle and Southern District Courts.
- Manatee County Bar Association, Member.
- Sarasota County Bar Association, Member.
- Manasota Legal Aid, Past-President.
- Leadership Manatee, 2007-2008 class.
- Manatee County Young Lawyers Division, Past-President.
- Named one of *Biz941 Magazine's* 2009 "Top 25 People to Watch"
- Florida Bar Young Lawyers Division Board of Governor Representative for the 12th Judicial Circuit
- Propeller Club, Board of Director

### Education

- J.D., University of Florida College of Law, 2001.
- Environmental and Land Use Certificate, University of Florida College of Law, 2001.
- B.S., cum laude, Florida State University, 1997.

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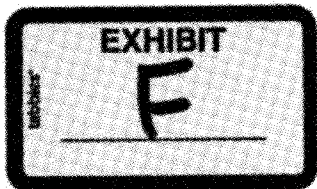
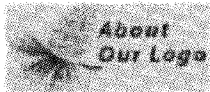
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# Jennifer R. Cowan

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jcowan@llw-law.com



## Areas of Practice

Environmental, Land Use, Local Government and Civil Litigation & Appeals

- Assists local government and special district clients on matters including annexation issues, interlocal agreements, Public Records Law and Sunshine Law matters, and use of public/government property.
- Assists clients in environmental and land use matters before local, regional and state agencies on matters including development or regional impacts, Notices of Proposed Change, comprehensive plan amendments, zoning issues, impact fees reimbursements and disputes, wetland permitting and enforcement actions and development of Community Development Districts.

## Prior Professional Experience

- During law school, Ms. Cowan was an intern for Justice R. Fred Lewis of the Florida Supreme Court and Judge Anthony Rondolino of the Sixth Judicial Circuit Court.
- In 2005, Ms. Cowan was a Summer Associate for Lewis, Longman & Walker, P.A., where she researched land use and environmental law issues such as permitting, easements and sovereign submerged lands.
- Before attending law school, Ms. Cowan worked in the private sector as a financial manager of a Los Angeles intercity community redevelopment organization.
- Ms. Cowan also worked for many years in the public sector for a broad range of governmental entities, including: Governor Lawton Chiles General Counsel's Office, where she assisted the Governor with judicial appointments, executive orders, capital cases, and served as his liaison with the State Attorneys; the Department of Community Affairs, Florida Housing Finance Agency, where she worked with developers on loan applications for low-income multifamily and single family developments; and the Sixth Judicial Circuit Court's Guardian ad Litem Program, where she conducted a community outreach program and represented abused, neglected, and abandoned children in dependency court proceedings.

## Professional, Civic and Community Involvement

- Member, City of Gulfport's Planning and Zoning Board/Local Planning Agency (April 2010-April 2012)
- Member, American Bar Association
- Member, Florida Bar Association
- Director, Manatee County Bar Association, Young Lawyers Division
- Trustee, Arthur Family Foundation

## Publications and Presentations

- "[Green Initiatives: In Theory and In Practice](#)," presented with Tara Duhy at the 4th Campus & Community Sustainability Conference held at the University of South Florida, October 9, 2009
- "Green Initiatives" presentation on State sustainability mandates and potential funding sources for local governments related to sustainability initiatives. Presented to Pinellas Green Government Partnership on October 28, 2009.

## Education

- J.D., *cum laude*, Stetson University College of Law with a concentration in advocacy, 2006
- B.S., Philosophy and Political Science with minors in chemical science and religion, Florida State University, 1994

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