

FLORIDA NELA AMICUS BRIEFS

1. **McElrath v. Burley, 707 So. 2d 836 (Fla. 1st DCA 1998), rev. den., 718 So. 2d 166 (Fla. 1998)** (jointly sponsored by ACLU of Florida) Amicus author: Prof. Michael Masinter. Plaintiff's counsel: Richard E. Johnson.

Trial court declared unconstitutional section of Florida Civil Rights Act of 1992 restricting plaintiff's access to court if FCHR issues a "no cause" finding within 180 days. Statute violates due process, equal protection, access to courts. First District reversed. Supreme Court denied review.

2. **The Golf Channel v. Jenkins, 752 So. 2d 561 (Fla. 2000)**. Amicus authors: Catherine A. Kyres and Richard E. Johnson. Plaintiff's counsel: Keith Mitnick.

Florida Supreme Court established that liberal construction of this remedial law trumps the principle of strict construction of laws contrary to the common law. The writing and oath requirements of the statute apply only to one of the three forms of whistleblower conduct, not all three. The Supreme Court opinion appeared to rely heavily on the NELA brief.

3. **Barnett v. Doctors & Associates, Inc., ___ F.3d ___ (11th Cir. ___)** (jointly sponsored with ACLU of Florida) Amicus author: Prof. Michael Masinter. Plaintiff's counsel: Bruce Rogow.

Unsuccessful appeal of sanctions against NELA member Neil Chonin pursuant to 28 U.S.C. § 1927.

4. **Joshua v. City of Gainesville, 768 So. 2d 432 (Fla. 2000), overruling, Milano v. Moldmaster, Inc., 703 So. 2d 1093 (Fla. 4th DCA 1996)**. Amicus authors: Cynthia Sass and Gail Flatow. Plaintiff's counsel: Gary Printy.

Florida Supreme Court establishes that where FCHR fails to make a determination within 180 days under Chapter 760, a four-year statute of limitation applies, not a limitation period of 545 days from the filing of the FCHR charge. Court further emphasizes statutory requirement of liberal construction such that wherever possible the Florida Civil Rights Act of 1992 should be read in the way that promotes access to the remedy.

5. **Klonis v. Department of Revenue, 766 So. 2d 1186 (Fla. 1st DCA 2000)**. Amicus counsel: Richard E. Johnson. Plaintiff's counsel: Marie Mattox.

Appeals court squelched the State of Florida's claim that it enjoyed sovereign immunity from Florida Civil Rights Act of 1992 because Legislature had not used words such as "sovereign immunity is hereby waived" but had instead merely identified State of

Florida as possible defendant. Several trial courts had accepted the State's argument.

Florida NELA Amicus Briefs (Cont'd)

6. **Dawkins v. Bellsouth Telecommunications, Inc., 53 F. Supp.2d 1356 (M.D. Fla. 1999), aff'd, 247 F.3d 245 (11th Cir. 2001) (table).** Amicus counsel: Tad Delegal. Plaintiff's counsel: Merette Oweis.

The trial court held that a determination of "unable to conclude" from EEOC was tantamount to a determination of "no cause" from FCHR. The 11th Circuit declined to reach this issue in its unpublished opinion. The issue was later resolved in our favor. See Woodham, below.

7. **Cisko v. Phoenix Medical Products, 797 So. 2d 11 (Fla. 2d DCA 2001), rev. den., 839 So.2d 699 (Fla. 2003) (table).** Amicus counsel: Archibald J. Thomas, III. Plaintiff's counsel: Douglas Wilson.

Held that an EEOC "unable to conclude" disposition can not take the place of an FCHR "no cause" determination because it does not inform the charging party of rights under Florida Civil Rights Act of 1992 or what options are available under the state act. Also illustrates a practical and explicit application of the Joshua principle of liberal construction.

8. **Norelus/Amlong** (jointly sponsored with ACLU of Florida) Amicus counsel: Richard E. Johnson. Plaintiff's counsel: TBA.

This case was approved for amicus participation more than two years ago when Judge Lenard of the Southern District was expected to approve a magistrate judge's order that she had directed to be entered. The magistrate judge's order imposed massive sanctions on NELA members Karen and William Amlong under 28 U.S.C. § 1927. The order has not yet issued, hence no appeal, hence no brief. Issues similar to those concerning Chonin (see Barnett, above).

9. **Williams v. Southeast Florida Cable, Inc., 782 So.2d 988 (Fla. 4th DCA 2001).** Amicus counsel: Cynthia Sass and Gail Flatow. Plaintiff's counsel: Jeanne Brady.

Our Joshua team submitted the same brief in this then-pending case. After the Supreme Court decided Joshua, the 4th DCA used this case as a vehicle for repudiation of its own Milano opinion.

Florida NELA Amicus Briefs (Cont'd)

10. **Ginsberg and Scarfo v. Allstate Ins. Co., Case No. SC00-2614 (pending).** Amicus counsel: Richard E. Johnson and Carol Swanson. Plaintiff's counsel: Martha Chapman, Robert Weisberg.

This long-running case with an extremely complex history remains pending in the Florida Supreme Court, where it was certified by the Eleventh Circuit. It got into the federal system after being removed from the state system and is now back before the state supreme court on very different issues, one of which is whether the common law tort of invasion of privacy by physical intrusion can include offensive touching of the body of the plaintiff. It is on this issue only (of the many issues in the case) that Florida NELA has expressed an opinion.

11. **Chapman v. Laitner, 809 So.2d 51 (Fla. 3d DCA 2002).** Amicus counsel: Richard E. Johnson. Plaintiff's counsel: Frank Shooster.

In this case, a trial judge illegally applied a Florida offer of judgment statute to a federal cause of action under 42 U.S.C. § 1983. The 3d DCA reversed, largely for the reasons argued in our brief.

12. **Poer v. Calder Race Course, Inc., 775 So.2d 970 (Fla. 3d DCA 2000), rev. dism'd 823 So.2d 739 (Fla. 2002).** Amicus counsel: William R. Amlong. Plaintiff's counsel Bruce Botsford.

In this case the 3d DCA held that EEOC's loss in a federal court on the plaintiff's behalf collaterally estopped the plaintiff from litigating related issues in state court under state law. This conflicted with a decision of another district court, Andujar v. National Property & Casualty Underwriters, 659 So.2d 1214 (Fla. 4th DCA 1995). The Supreme Court granted review, we submitted our brief, the Court dismissed jurisdiction, the case was never decided.

13. **Woodham v. Blue Cross and Blue Shield of Florida, Inc., 829 So.2d 891 (Fla. 2002).** Amicus counsel: Richard E. Johnson and Archibald J. Thomas, III. Plaintiff's counsel: Lisa Fletcher-Kemp and Gary Printy.

This was arguably the most important case in the history of the Florida Civil Rights Act of 1992. The Court resolved three important issues. First, an "unable to conclude" finding from EEOC can not bind FCHR and is not a decision of FCHR. The statutory due process rights of charging parties must be strictly observed. Second, after the right to sue

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under 760 vests on day 180, it may not thereafter be revoked by any administrative agency. Third, the Court reaffirmed even more strongly the notion that the statute means what it says in interpreting all potential issues of law in a fashion that grants the most access to the remedy.

14. **Farmer v. United Space Alliance and Lockheed Martin Space Operations Co., Case No. 02-12966J (11th Cir. 2002)**. Amicus counsel: Richard E. Johnson. Plaintiff's counsel: Adrienne Trent.

A U.S. District Court erroneously applied the state proposal for settlement (offer of judgment) statute to claims arising under Title VII and Chapter 760. After full briefing to the 11th Circuit, the case settled.

15. **Bach v. United Parcel Service, Inc., 837 So.2d 395 (Fla. 2002)** Amicus counsel: Richard E. Johnson. Plaintiff's counsel: Stacy Strolla.

Though this case was appealed separately, the Supreme Court decided it by name in its Woodham opinion. Accordingly, the cited opinion is just a paragraph. One must read Woodham to see Bach discussed. The main issue in Bach was whether a "no cause" finding after 180 days could have any preclusive effect on the right to sue under state law. It can not.

16. **Dahl v. Eckerd Family Youth Alternatives Foundation, Inc., 843 So.2d 956 (Fla. 2d DCA 2003)**. Amicus author: Fredrick Ford. Plaintiff's counsel: Karen Amlong.

State funded private entities like this Defendant may be sued under either the public or the private whistleblower act. The trial court erroneously ruled they must be sued under the public whistleblower's act. The appeals court overturned, establishing the legal interpretation we had advocated.

17. **Bearlly v. Department of Corrections, 2002 WL 982429, 88 FEP Cases 1333 (Fla. 8th Cir.Ct. Union County Apr 10, 2002), aff'd, 845 So.2d 186 (Fla. 1st DCA 2003) (table)**. Amicus counsel: John C. Davis. Plaintiff's counsel: Archibald J. Thomas, III.

Here the trial court ruled that a plaintiff under the Florida Civil Rights Act of 1992 must give statutory notice under § 768.28 where the defendant is a governmental entity. The 1st DCA issued an opinion "per curiam affirmed."

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18. **Bruner v. GC-GW, Inc., d/b/a Jackson-Cook, Case No. 1D03-3775 (Fla. 1st DCA pending)**. Amicus counsel: Richard E. Johnson. Plaintiff's counsel: Vernon T. Grizzard.

New employer fired employee because he had filed worker's compensation claim against old employer, making him a worker's comp risk. Trial judge ruled that § 440.205 does not protect against firing by the new employer, only against the employer against whom the claim was filed.

19. **Snow v. Ruden, McCloskey, Smith, Shuster, & Russell, P.A., Case No. 02-012072(21) (Fla. 2d DCA pending)**. Amicus counsel: Jill Schwartz. Plaintiff's counsel: Karen Amlong.

Associate attorney fired by firm because she reported illegal and unethical conduct of supervising partner to Bar. Trial court ruled that private whistleblower act does not apply because Bar's ethics rules are not a "law, rule, or regulation" within the meaning of the statute.

20. **Martinez v. Abraham Chevrolet-Tampa, Inc., Case No. 2D03-3133 (Fla. 2d DCA pending)**. Amicus counsel: Douglas L. Wilson. Plaintiff's counsel: Craig L. Berman.

The trial court dismissed a claim under the Florida Civil Rights Act because the charge was not notarized. The charge was filed with EEOC and met that agency's requirements. The court refused to accept the amicus brief of Florida NELA, the first court ever to do so. The court also denied a motion for clarification, seeking an explanation of the rejection.

21. **Pagan v. Abraham Chevrolet-Tampa, Inc., Case No. 2D04-1045 (Fla. 2d DCA pending)**. Amicus counsel: Douglas L. Wilson. Plaintiff's counsel: Craig L. Berman.

Identical scenario with Martinez, above. This time we have submitted a motion for leave to file the brief well ahead of the deadline without including the brief. The court has not ruled on the motion. The Defendant has again opposed it.