

Legal Writing

Mercedes Prieto
Instructor

9.800 Citation Exercises

Please write the correct 9.800 citation for the attached documents:

1. _____

2. _____

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10. _____

#1

Criminal law—Search and seizure—Vehicle—Closed “hide a key boxes” on floorboard of passenger seat were within scope of defendant’s consent to search of vehicle for drugs—Defendant specifically consented to search of his person and vehicle “for drugs,” placed no restrictions on the consent given, and did not attempt to withdraw or limit scope of consent or instruct officer that consent did not extend to containers within vehicle—Error to grant motion to suppress crack rocks and other forms of narcotics found in key boxes

STATE OF FLORIDA, Appellant, v. DELVIN MCCUTCHEON, Appellee. 4th District, Case No. 4D05-1263. September 7, 2005. Appeal of a non-final order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Michael Kaplan, Judge; L.T. Case No. 04-13709CF10A. Counsel: Charles J. Crist, Jr., Attorney General, Tallahassee, and James J. Carney, Assistant Attorney General, West Palm Beach, for appellant. John Weekes of Law Offices of Weekes & Weekes, P.A., Fort Lauderdale, for appellee.

(MAY, J.) The State of Florida appeals an order granting the defendant’s motion to suppress. It argues the trial court erred in suppressing evidence seized during a vehicle search. We agree with the State and reverse the suppression order.

#2 ↓

Art. 10

CONSTITUTION

§ 25. Patients’ right to know about adverse medical incidents¹

(a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

(b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained.

(c) For purposes of this section, the following terms have the following meanings:

(1) The phrases “health care facility” and “health care provider” have the meaning given in general law related to a patient’s rights and responsibilities.

#3 ↓

The Court has thus determined that it should accept jurisdiction in *Grace and Ingraham*. It is accordingly ordered that the petitions for review in *Grace and Ingraham* are granted, and those two decisions are quashed and remanded for reconsideration in light of this Court’s decision in *Aguilera*. No motion for rehearing will be entertained by the Court.

It is so ordered. (PARIENTE, C.J., and ANSTEAD, LEWIS and QUINCE, JJ., concur. CANTERO, J., concurs in result only. WELLS and BELL, JJ., dissent.)

* * *

Dissolution of marriage—Income of parties—“Pass-through” income from an S corporation that was not actually distributed to shareholder-spouse, but which was retained by a corporation for a corporate purpose does not constitute income within the meaning of chapter 61—Where undistributed “pass-through” income has been retained for noncorporate purposes, such as to shield income from reach of the other spouse during dissolution, improper motive for its retention makes it available “income” under section 61.046(7) or “business income” under section 61.30(2)(a)(3)—When issue of whether undistributed “pass-through” income was retained for corporate purposes is contested, shareholder-spouse should have burden of proving that income was properly retained for corporate purposes rather than impermissibly retained to avoid alimony, child support, or attorney’s fees obligations by reducing the shareholder-spouse’s amount of available income—Factors to be considered include extent to which shareholder-spouse has access to or control over “pass-through” income retained by corporation, limitations set forth in section 607.06401(3) governing corporate distributions to shareholders, and purposes for which “pass-through” income has been retained—Shareholder-spouse’s ownership interest should be considered, but is not dispositive, even where spouse is sole or majority shareholder in corporation and has ability to control the retention and distribution of corporation’s income

SHERRY PALICTE ZOLD, Petitioner, vs. JOHN F. ZOLD, Respondent. Supreme Court of Florida. Case No. SC04-1858. September 15, 2005. Application for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions. Fifth District - Case Nos. 5D03-148 and 5D03-2117 (Orange County). Counsel: Norman D. Levin and Amy Hamlin of Norman D. Levin, P.A., Longwood, for petitioner. Charles W. Willits, Orlando, for respondent.

(PARIENTE, C.J.) We have for review *Zold v. Zold*, 880 So. 2d 779 (Fla. 5th DCA 2004), which expressly and directly conflicts with *Martinez v. Martinez*, 761 So. 2d 433 (Fla. 3d DCA 2000), *Sohacki v. Sohacki*, 657 So. 2d 41 (Fla. 1st DCA 1995), and *Zipperer v. Zipperer*, 567 So. 2d 916 (Fla. 1st DCA 1990). We have jurisdiction.¹ The conflict issue is whether “pass-through” income² from an S corporation that is not actually distributed to the shareholder-spouse is to be considered income for the purposes of calculating alimony, child support, and attorney’s fees.

#4 ↓

§ 1001.23

FLORIDA STATUTES ANNOTATED

Section		Section	
1002.55.	School-year prekindergarten program delivered by private prekindergarten providers.	1002.67.	Performance standards; curricula and accountability.
1002.57.	Prekindergarten director credential.	1002.69.	Statewide kindergarten screening; kindergarten readiness rates.
1002.59.	Emergent literacy training courses.	1002.71.	Funding; financial and attendance reporting.
1002.61.	Summer prekindergarten program delivered by public schools and private prekindergarten providers.	1002.73.	Department of Education; powers and duties; accountability requirements.
1002.63.	School-year prekindergarten program delivered by public schools.	1002.75.	Agency for Workforce Innovation; powers and duties; operational requirements.
1002.65.	Professional credentials of prekindergarten instructors; aspirational goals; legislative intent.	1002.77.	Florida Early Learning Advisory Council.
		1002.79.	Rulemaking authority.

PART II. STUDENT AND PARENTAL RIGHTS

1002.22. Student records and reports; rights of parents and students; notification; penalty

(1) Purpose.—The purpose of this section is to protect the rights of students and their parents with respect to student records and reports as created, maintained, and used by public educational institutions in the state. The intent of the Legislature is that students and their parents shall have rights of access, rights of challenge, and rights of privacy with respect to such records and reports, and that rules shall be available for the exercise of these rights.

(2) Definitions.—As used in this section:

(a) “Chief executive officer” means that person, whether elected or appointed, who is responsible for the management and administration of any public educational body or unit, or the chief executive officer’s designee for student records; that is, the district school superintendent, the director of a career center, the president of a public postsecondary educational institution, or their designees.

#52
862 So.2d 931

862 So.2d 931, 29 Fla. L. Weekly D223

District Court of Appeal of Florida,
Second District.
Antonio DAVIS, Appellant,
v.
STATE of Florida, Appellee.
No. 2D03-1767.
Jan. 14, 2004.

Background: State petitioned for revocation of drug offender probation. The Circuit Court, Hillsborough County, Ronald N. Ficarrota, J., granted petition, and probationer appealed.

Holdings: The District Court of Appeal, Silberman, J., held that:

- (1) evidence that probationer was discharged from drug treatment program, was insufficient to support revocation, and
 - (2) evidence that probationer had made no effort to comply with community service condition of his probation was sufficient to support finding of willful and substantial violation thereof.
- Reversed and remanded.

#62
Rule 1.310 RULES OF CIVIL PROCEDURE

completion and return of the deposition unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

* * * *

While requiring the filing of the deposition with the clerk is essential to its availability for use at the trial, there seems to be no good reason why the filing of a deposition taken solely for discovery purposes cannot be waived. The stipulation of waiver should be signed by all parties, since any party may make use of the deposition at the trial.

* * * *

Rule 1.320. Depositions Upon Written Questions

(a) **Serving Questions; Notice.** After commencement of the action any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in rule 1.410. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes. A party desiring to take a deposition upon written questions shall serve them with a notice stating (1) the name and address of the person who is to answer them, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which that person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition

#72
Rule 8.095 JUVENILE PROCEDURE RULES

Rule 8.095. Procedure When Child Believed to Be Incompetent or Insane

(a) **Incompetency At Time of Adjudicatory Hearing or Hearing on Petition Alleging Violation of Juvenile Probation in Delinquency Cases.**

(1) *Motion.*

(A) A written motion for examination of the child made by counsel for the child shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the child is incompetent to proceed. To the extent that it does not invade the lawyer-client privilege, the motion shall contain a recital of the specific observations of and conversations with the child that have formed the basis for the motion.

(B) A written motion for examination of the child made by counsel for the state shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe the child is incompetent to proceed and shall include a recital of the specific facts that have formed the basis for the motion, including a recitation of the observations of and statements of the child that have caused the state to file the motion

#82
Rule 12.520 FAMILY LAW RULES

Commentary

~~1995 Adoption. This rule replaces Florida Rule of Civil Procedure 1.520 and eliminates the advancement of costs imposed by rule 1.520.~~

~~**Rule 12.530. Motions for New Trial and Rehearing; Amendments of Judgments**~~

~~Motions for new trial and rehearing and amendments of judgments shall be governed by Florida Rule of Civil Procedure 1.530.~~

Rule 12.540. Relief From Judgment, Decrees, or Orders

Florida Rule of Civil Procedure 1.540 shall govern general provisions concerning relief from judgment, decrees, or orders, except that there shall be no time limit for motions based on fraudulent financial affidavits in marital or paternity cases.

#9

Supreme Court of Florida

No. SC03-207

AMERICAN HOME ASSURANCE COMPANY,
Petitioner,

vs.

APAC-FLORIDA, INC., etc.,
Respondent.

[September 22, 2005]

#10

Office of the Attorney General
State of Florida

AGO 2004-16
March 24, 2004

RE: BUSINESS AND PROFESSIONAL REGULATION-ALCOHOLIC BEVERAGES AND TOBACCO-PUBLIC RECORDS-LICENSING - applicability of provisions of Chapter 455, Florida Statutes, to Division of Alcoholic Beverages and Tobacco. ss. 455.01, 455.017, 455.229, Fla. Stat.

Ms. Diane Carr
Secretary, Department of Business and Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750

Attention: Eric R. Hurst
Assistant General Counsel

Dear Secretary Carr:

You have asked for my opinion on substantially the following questions:

1. Is the Division of Alcoholic Beverages and Tobacco prohibited by section 455.229(1), Florida Statutes, from providing copies of financial documents in response to a request for public records when those records are part of a licensing file maintained by the division?
2. Is the Division of Alcoholic Beverages and Tobacco required to produce social security numbers for inspection and copying when that information is contained in records required to be submitted to the division for licensing purposes?