



BUSINESS LAW SECTION OF THE FLORIDA BAR

eDiscovery and Digital Evidence Case Law Update

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Florida State Court Decisions

[Bank of New York Mellon v. Clark](#)

183 So.3d 1271, 1272 (Fla. 1st DCA 2016)

Trial court's dismissal of foreclosure claim as a sanction for discovery violations was an abuse of discretion because the trial court did not make explicit written findings pursuant to the six "Kozel" factors. Specially concurring, however, Judge Bradford (Brad) L. Thomas addressed the issue of discovery abuse and stated:

Nevertheless, we cannot and do not countenance actions in which litigants disregard discovery deadlines, file meaningless objections, insert boilerplate responses, and file repeated motions for additional time to respond, only to provide insufficient information or documents. When legal decisions are unduly delayed because one party refuses to perform their legal obligations to comply with discovery rules, it is entirely appropriate for a trial court to carefully consider sanctions when raised by the non-offending party. It is critical to remember that discovery abuses are not merely private matters between private litigants, but are public abuses that violate citizens' proper expectation that the judiciary will ensure that cases are timely resolved.

Civil cases lingering in courts for years without final resolution because of lengthy discovery disputes should not be tolerated in courts of law. All involved, judges and litigants, have a solemn responsibility to ensure that inexcusable delays in civil legal proceedings do not occur, and where such are documented, that the delays are appropriately punished. I commend the trial court for its efforts here, but I concur, as I must, for further proceedings in accordance with *Kozel*.

[Restrepo v. Carrera](#)

2016 WL 231955 (Fla. 3d DCA 2016)

Trial court's order directing petitioner to "provide cell phone numbers and/or names of providers used during the six (6) hour period before the time of the crash and the six (6) hour period after the crash" violated petitioner's Fifth Amendment rights and constituted a departure from the law from which petitioner had no adequate remedy on appeal.

[Prater v. Comprehensive Health Center](#)

2016 WL 231330 (Fla. 3d DCA 2016)

Trial court's order striking plaintiff's pleadings and entering final judgment in favor of the defendants was reversed because the severity of the sanctions were not commensurate with the violation at issue: the disclosure of an electronic copy of a single page of evidence on the eve of the first day of jury selection. There was also not competent substantial evidence to support the trial court's conclusion that each of the *Kozel* factors had been met, including proof that plaintiff's counsel's actions were "willful, deliberate or contumacious."

[David v. Textor](#)

2016 WL 64743 (Fla. 4th DCA 2016)

Trial court's ex parte injunction prohibiting cyberstalking was reversed because the conduct alleged in the petition (emails, online postings and a text message) was not cyberstalking and the injunction was a prior restraint on speech which violated the First Amendment.

[Wells Fargo Bank, N.A. v. Balkissoon](#)

183 So.3d 1272 (Fla. 4th DCA 2016)

Trial court erred in excluding electronic evidence of loan history where proper foundation under business records exception was laid by qualified witness.

[Bank of N.Y. Mellon v. Johnson](#)

2016 WL 347355 (Fla. 5th DCA 2016):

Trial court erred in excluding electronic evidence of loan history where proper foundation under business records exception was laid by qualified witness.

Florida Federal Court Decision

[In re: Takata Airbag Prod. Liab. Litig.,](#)

MDL No. 5-2599 (S.D.Fla. March 1, 2016)

District Court agreed with defendants' request in a products liability case to redact seven irrelevant categories of commercially sensitive information and to withhold irrelevant and commercially sensitive "parent" documents and other documents from responsive document "families." Citing Chief Justice Roberts, the concept of proportionality and amended Federal Rule 26(b)(1), the District Court determined that (i) a party is not entitled to receive every piece of relevant information and (ii) a party is similarly not entitled to receive every piece of irrelevant information in responsive documents if the producing party has a persuasive reason for why such information should be withheld.