

R/S

7

IN THE SUPREME COURT  
OF FLORIDA

CASE NO. 64,725

DCA-3 NO. 82-1475

MIAMI DAILY NEWS, INC. d/b/a  
THE MIAMI NEWS and THOMAS H.  
DUBOCQ,

Petitioners,

v.

ALICE P., SUSAN A. JEANETTE  
R., BARBARA D., CATHLEEN O.,  
DOREEN F., HELEN M., ILENE T.,  
JANET T., MARGARET Y., NANCY  
J., JUDY R., and TWO UNNAMED  
MOTHERS,

Respondents.

\_\_\_\_\_ /

**FILED**

SID J. WHITE

FEB 23 1984

CLERK, SUPREME COURT.

By \_\_\_\_\_  
Chief Deputy Clerk

ANSWER BRIEF ON JURISDICTION  
OF RESPONDENTS

THOMAS G. SHERMAN, ESQUIRE  
DeMEO & SHERMAN, P.A.  
Attorneys for Respondents  
3081 Salzedo Street  
Second Floor  
Coral Gables, Florida 33134  
(305) 448-5898

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
ARGUMENT:	
I. THE DECISION OF THE DISTRICT COURT OF APPEAL DOES NOT DIRECTLY AND EXPRESSLY CONFLICT WITH DECISIONS OF THIS COURT OR DECISIONS OF OTHER COURTS OF APPEAL, AND THEREFORE, THIS COURT SHOULD NOT EXERCISE JURISDICTION HEREIN.	1-2
CONCLUSION	3
CERTIFICATE OF SERVICE	4

TABLE OF CITATIONS

<u>STATUTES:</u>	<u>Page</u>
Florida Statutes §119.07(3)(a).....	-1-
Florida Statutes §455.241 .....	-1-
Florida Statutes §382.35 .....	-1-
Article V, §3 (b)(3), Fla. Const. ....	-3-

ARGUMENT

I. THE DECISION OF THE DISTRICT COURT OF APPEAL DOES NOT DIRECTLY AND EXPRESSLY CONFLICT WITH DECISIONS OF THIS COURT OR DECISIONS OF OTHER COURTS OF APPEAL, AND THEREFORE, THIS COURT SHOULD NOT EXERCISE JURISDICTION HEREIN.

The decision of the Third District Court of Appeal is not in express and direct conflict with a decision of this Court, and thus, the Petitioners fail to articulate such a conflict in their brief. The Third District did not cite any of the cases Petitioners mention in their brief, so that Petitioners attempt to extrapolate from the Third District's opinion in order to contrive conflict jurisdiction for this Court. However, the Third District adhered to the general principle expressed in Florida Statute §119.07(3)(a), that:

All public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, shall be exempt [from the Act]. [A.5]

The criteria articulated in F.S. §119.07(3)(a) provide protection for the information at issue herein by virtue of F.S. §455.241 and §382.35.

The Petitioners claim that the Third District accepted an invitation "to, in effect, legislate interstitially..." misstates reality. It could not be more clear from the opinion of the Third District that the court believed it was invited to, in effect, "legislate interstitially, by bringing midwifery reports within the protective umbrella of §455.241...", but declined the invitation. [A.6] Rather, it found, as argued by Respondents below, that the records in question were

those of a licensed physician rather than a midwife applicant.

It is unequivocally clear that the Third District has expressed no conflict with a prior decision of this Court, in that no direct conflict of such a nature exists. Rather, the Petitioners are merely unhappy with the decision of the Third District, which is clearly no basis for this Court to take jurisdiction. As pointed out in the Answer Brief filed by HRS, the type of information which Petitioners sought to reveal to the public underscores the correctness and importance of the Third District's opinion.

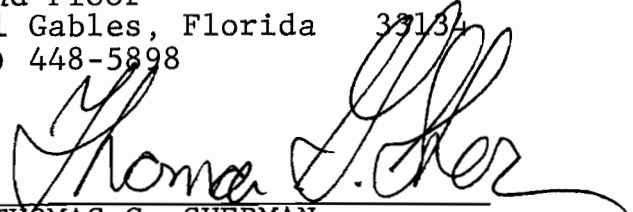
CONCLUSION

Jurisdiction in this Court is neither available nor warranted. By urging this Court to take jurisdiction, Petitioners attempt to render Art. V, §3 (b)(3), Fla. Const., regarding conflict jurisdiction, a nullity. The Third District's opinion is not only correct, but is consistent with prior decisions of this Court and with the Public Records Act.

Respectfully submitted,

DeMEO & SHERMAN, P.A.  
Attorneys for Respondent  
3081 Salzedo Street  
Second Floor  
Coral Gables, Florida 33134  
(305) 448-5898

By:

  
THOMAS G. SHERMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief on Jurisdiction of Respondents, was mailed on this 20th day of February, 1984, to: Joseph P. Averill, Esquire, Attorney for Petitioners, 25 West Flagler Street, Miami, Florida 33131, and to: Morton Laitner, Esquire, Attorney for HRS, 1350 N.W. 14th Street, Miami, Florida 33125.

DeMEO & SHERMAN, P.A.  
Attorneys for Respondent  
3081 Salzedo Street  
Second Floor  
Coral Gables, Florida 33134  
(305) 448-5898

By: 

THOMAS G. SHERMAN