IN THE SUPREME COURT,
STATE OF FLORIDA

Case No. 67,195

CITY OF ORLANDO,

Petitioner,

vs.

ROLAND E. DESJARDINS, et ux., et al.,

Respondents.
_____/

PETITIONER'S INITIAL BRIEF ON THE MERITS

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NOTE

For purposes of appeal, the following references will be used. All citations to the record shall be indicated as "(A ___)". Petitioner, CITY OF ORLANDO, shall be referred to as Petitioner or by name. Repondents, ROLAND E. DesJARDINS or FRANCES C. DesJARDINS, shall be referred to as Respondent(s) or by name.

ISSUES

ISSUE I

THE FIFTH DISTRICT COURT OF APPEAL'S DECISION RENDERED JUNE 3, 1985 IN REFUSING TO RECTOSPECTIVELY APPLY FLORIDA STATUTE §119.07(3)(o)(1984) EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF CITY OF NORTH MIAMI VS. MIAMI HERALD PUBLISHING CO., 468 So.2d 218 (Fla. 1985) AND OTHER CASES.

ISSUE II

CHAPTER 119, FLA. STAT. (1983) SHOULD BE INTERPRETED TO AVOID CONFLICT WITH THE FLORIDA BAR CODE OF PROFESSIONAL RESPONSIBLITY, DISCIPLINARY RULE 7-101 AND ETHICAL CONSIDERATIONS 7-7 and 7-8.

ISSUE III

THE REQUEST TO PRODUCE WAS IMPROPERLY MADE UNDER §119.021, Fla. Stat. (1983).

STATEMENT OF CASE AND FACTS

Documents referred to in the Appendix will be designated by the symbol (A). Respondents, Roland E. DesJardins and Francis C. DesJardins' First Amended Complaint against the Petitioner, City of Orlando, alleged that negligent traffic signal maintenance caused injury to Roland DesJardins (A. i-iv). A Request to Produce was served on July 23, 1984 (A. v-vii). A Response to Request to Produce which objected to production of attorney/client matters was served by Petitioner on August 17, 1984 (A. viii). A Statement regarding Demand for Public Disclosure which more particularly raised attorney/client privilege was served on December 7, 1984 (A. ix-xii).

A hearing on Petitoner's objections was held on December 7, 1984 and the Petitioner was ordered to produce attorney/client documents (A. xiii). The Petitioner served a Notice of Appeal and a Petition for Common Law Certiorari on January 4, 1985 (A. xiv-xxix)

In an opinion filed April 25, 1985, the Fifth District Court of Appeal denied the Petition for Writ of Certiorari. 469 So.2d 831 (Fla. 5th DCA 1985) (A. xxx-xxxii). After the Fifth District Court denied a Request for Rehearing or Clarification, a Notice to Invoke Discretionary Jurisdiction was timely filed on June 14, 1985 (A. xxxiii). This court accepted jurisdiction and dispensed with oral argument on January 21, 1986.

SUMMARY OF ARGUMENT

The decision of the District Court is direct conflict with the decision of this court in City of North Miami vs. Miami Herald Publishing Company, 468 So.2d 218 (Fla. 1985) and decisions of other Florida Appellate Courts. The District Court and the Circuit Court erroneously refused to retrospectively apply §119.07(3)(o) Fla. Stat. (1984) which exempts litigation files and material prepared by an attorney for a governmental agency from public disclosure. The legislative history of §119.07(3)(o) Fla. Stat. clearly shows that it was enacted by the 1984 legislature as a remedial and procedural statute. Subsection (o) was added because the legislature was concerned that the courts had misinterpreted the applicablity of the attorney/client privilege. The decision below is unquestionably in direct conflict with this court's decision in City of North Miami where the Florida Supreme Court gave retrospective application to §119.07(3)(o).

Secondly, Chapter 119, as interpreted by the Florida Appellate Courts, conflicts with Disciplinary Rule 7-101(A)(3) and Ethical Considerations 7-7 and 7-8, Florida Code of Professional Responsibility which require a lawyer to keep his client fully informed. If attorney/client communications were not protected then the attorney must make a "chinese choice" between (1) failing to advise his client and (2) keeping his client informed but risking disclosure of sensitive litigation matters.

Thirdly, the Request to Produce does not comply with §119.021, Florida Statutes (1983), since it fails to address itself to the legal custodian of the governmental records as

required by the Public Records Act. The decision of the lower court should be reversed and this case should be remanded to the trial court with instructions to prevent disclosure of privileged attorney/client documents.

ARGUMENT

ISSUE I

THE FIFTH DISTRICT COURT OF APPEAL'S DECISION RENDERED JUNE 3, 1985 IN REFUSING TO RECTOSPECTIVELY APPLY FLORIDA STATUTE §119.07(3)(o)(1984) EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF CITY OF NORTH MIAMI VS. MIAMI HERALD PUBLISHING CO., 468 So.2d 218 (Fla. 1985) AND OTHER CASES.

The Respondents in the instant case served a Request to Produce on counsel for the CITY OF ORLANDO on July 23, 1984 (A v-vii). A response to the Request for Production which objected to production of documents within the attorney/client privilege was served by Petitioner on August 17, 1984 (A viii). A statement regarding Demand for Public Disclosure which more specifically raised the attorney/client privilege was served on December 7, 1984 (A ix-xii).

The hearing on Petitioner's attorney/client objections was held on December 7, 1984, a date over two months subsequent to the effective date of the session law enacting Fla. Stat. §119.07(3)(o). The lower court and the trial court refused to apply Subsection (o) despite the fact that the hearing occurred subsequent to the effective date of this new legislation. Petitoner was ordered to produce privileged attorney/client matters (A xiii). This appeal timely followed.

In a case which raised similar questions regarding the attorney/client privilege, this Honorable Court in City of North Miami vs. Miami Herald Publishing Co., 468 So.2d 218 (Fla. 1985) remanded for retrospective application of Fla. Stat. §119.07(3)(o)(1984). It is clear from the lower court decisions in City of North Miami reported at 420 So.2d 653 (Fla. 3d DCA

1982) and 452 So.2d 572 (Fla. 3d DCA 1984) that the attorney/client communications at issue there were created or prepared prior to October 1, 1984, the effective date of the legislation creating Fla. Stat. §119.07(3)(o). Obviously, if the court felt that Fla. Stat. §119.07(3)(o) applied only to documents created after October 1, 1984, this Court would have remanded with specific instructions to apply Subsection (o) prospectively to documents created after October 1, 1984. No such limitation was imposed and in City of North Miami this Honorable Court properly instructed the lower court to determine the application of Subsection (o), the attorney/client privilege, to all of the communications, regardless of the date of their creation.

The decision presently under review expressly and directly conflicts with City of North Miami and City of North Miami vs. DeLapp, 472 So.2d 543 (Fla. 3d DCA 1985) since both the appellate court and the trial court refused to retrospectively apply Fla. Stat. §119.07(3)(o)(1984) contrary to this Court's instruction in City of North Miami. As in City of North Miami and DeLapp, this Honorable Court should reverse and remand for application of Fla. Stat. §119.07(3)(o). On its face Fla. Stat. §119.07(3)(o) is clearly meant to apply retroactively. Florida Statute §119.07(3)(o) states in pertinent part:

> (o). A public record which was prepared by an agency attorney, . . . or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or of the agency, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt

> from the provisions of subsection (1) until the conclusion of the litigation or adversarial administrative proceedings . . .

As will be developed below, the obvious intention of this exception was remedial. It is totally unfair and unjust for private litigants to require governmental entities with whom they are litigating, to provide them with governmental suit reports, letters setting forth legal conclusions regarding liability and litigation strategy, mental impressions, conclusions, legal theories, monetary evaluations and other highly sensitive matters. It is utterly impossible for local governments to effectively litigate in such an environment. The legislature was clearly acting in a procedural or remedial capacity when it added Subsection (o) to Fla. Stat. §119.07(3) and remedied this injustice.

Remedial or procedural statutes do not fall within the constitutional prohibition against retrospective application. See, Village of El Portal vs. City of Miami Shores, 362 So.2d 275, 278 (Fla. 1978); City of Lakeland vs. Cantinella, 129 So.2d 133, 136 (Fla. 1961). If legislation shows on its face an intention that it shall apply retroactively, retroactive application should be given. Yamaha Parts Distributors, Inc. vs. Ehrman, 316 So.2d 557 (Fla. 1975). Remedial or procedural changes are immediately applicable to pending cases, Village of El Portal, 362 So.2d at 278, including cases pending on direct appeal, Heilmann vs. State, 310 So.2d 376, 377 (Fla. 2d DCA 1975). Procedural law, sometimes referred to as remedial law, has been described as the legal machinery by which substantive law is made effective. State vs.

Garcia, 229 So.2d 236, 238 (Fla. 1969).

> "A remedial statute is 'designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good.' It is also defined as '(a) statute giving a party a mode of remedy for a wrong, where he had none, or a different one, before.'" Adams vs. Wright, 403 So.2d 391, 394 (Fla. 1981), quoting Black's Law Dictionary, 5th Ed. (1979).

The lower court in the case at bar erred in failing to hold that §119.07(3)(o) was retroactive. The lower court also erred in failing to remand for an in camera inspection with instructions to deny disclosure of attorney/client documents. Furthermore, the court's reliance upon Orange County vs. Florida Land Co., 450 So.2d 341 (5th DCA 1984) pet. for Rev. Denied, 458 So.2d 273 (1984), is misplaced because the issue in Orange County did not concern remedial or retrospective application of Fla. Stat. §119.07(3)(o)(1984).

It is readily apparent that Subsection (o) applies retroactively on its face since it even protects from disclosure matters which were prepared in anticipation of imminent civil or criminal litigation or adversarial administrative proceedings. It does not limit application to those documents created prior to its effective date. By its very terms, it obviously applies specifically to documents created before October 1, 1984.

The reference to exemption "until the conclusion of the litigation" is noteworthy because the test for disclosure is not the date of document creation or document demand but whether the litigation involving the questioned attorney/client documents is concluded. If the litigation is not concluded then the attorney/client documents are not discoverable regardless of the

date of creation or demand. This provision, by its very terms, applies to every case where litigation is not concluded and protects all attorney/client documents generated at any stage in the threatened or pending litigation. The exemption on its face applies retroactively to all privileged documents as long as litigation is not concluded.

Subsection (o) is procedural. There is no vested right in any manner of procedure, Denver and Rio Grande W.R.R. vs. Brotherhood of R.R. Trainmen, 387 U.S. 556, 87 S.Ct. 1746, 18 L.Ed.2d 954 (1967), or in a particular remedy, National Bank of Jacksonville vs. Williams, 38 Fla. 305, 20 So. 931, 933 (Fla. 1896). The Fifth District Court of Appeals respectfully missed the point when it concluded that the public records law was substantive. The remedial subsection in question deals strictly with a matter of procedure, not substantive law. This Honorable Court has recognized the procedural nature of Fla. Stat. §119.07(3)(o) when it stated that Subsection (o) provides " . . . for a temporary exemption from public disclosure of government agency, attorney prepared, litigation files during the pendency of litigation." City of North Miami, 468 So.2d at 219. The only thing regulated by Subsection (o) is the timing of the disclosure which is obviously a matter of procedure, not substantive law. The statute prevents egregious and devastating unfairness by postponing disclosure of sensitive litigation matters until the litigation is concluded. No substantive rights are affected.

The present erroneous ruling of the lower court engrafts a limitation on the application of Subsection (o) which was not

intended by the legislature at the time of its passage. Furthermore, the present erroneous decision creates a tremendous inconsistency by protecting attorney/client documents which were generated prior to October 1, 1984 only when the public records request for such documents is made after October 1, 1984. Under the present ruling of the district court, documents created many years prior to October 1, 1984 would be protected if the request was made for their production on October 2, 1984. On the contrary, those very same sensitive attorney/client documents would not be protected from disclosure if the request was made for their production on September 30, 1984. Where litigation is pending there is no logical or legal reason for making an arbitrary decision to either protect or require disclosure of the very same sensitive documents merely because there is a couple of days difference in the time when these very same documents were demanded.

The date of the request for these documents should obviously not be determinative. The only proper determinative factor is whether the litigation which these documents involve is concluded. If the date of the request was significant to the legislature then the legislature certainly have would have qualified the broad, wide sweeping immunity which it intended for sensitive litigation documents. No such qualification was made. The decision of the lower court is unsound from a policy standpoint and unquestionably inequitable to governmental litigants. It is of immense importance for this court to clarify the application of §119.07(3)(o) in order to provide consistency

and uniformity in its interpretation by lower courts.

LEGISLATIVE HISTORY

An examination into the legislative history of a statute is proper in order to ascertain the intent of the legislature. State Board of Accountancy vs. Webb, 51 So.2d 296 (Fla. 1951). The legislative history of Chapter, 84-298 demonstrates that the Florida Legislature intended that §119.07(3)(o)(Ch. 84-298, §5, Laws of Florida) to be remedial. Its history clearly establishes the validity of the above arguments. Chapter 84-298, §5(HB 1266) has its genesis in HB 687. HB 687, which was prefiled by Representative Crotty in the House of Representatives on February 27, 1984, was introduced in the house and referred to the Judiciary Committee on April 3, 1984. Journal of the House 68 (April 3, 1984). The committee reported a committee substitute favorably and placed it on the calender. Journal of the House 236 (April 19, 1984). HB 687 died on the calendar since an identical or comparable bill (HB 1266) was passed. History of House Bills 26 (July 10, 1984). HB 1266 was introduced by Representatives Crotty, Hanson, Johnson, Lehtinen, Murphy, and Peoples on May 3, 1984. Journal of the House 299 (May 3, 1984). HB 1266 substantially incorporated the provisions of HB 687.

HB 687 was referred to the Subcommittee on Open Government Laws, House Judiciary Committee on April 6, 1984. The subcommittee held a hearing on April 10, 1984. A tape recording of that hearing reveals that HB 687 reflected the concerns of the legislature regarding the decisions of Florida appellate courts which deny governmental entities and their attorneys the work

product privilege and the attorney/client privilege. The subcommittee had before it two amendments offered by Representative Lehtinen as a substitute. One amendment would have provided for a reciprocal disclosure procedure for attorney/client documents. The other amendment (further amended during the hearing), which was ultimately adopted by the subcommittee during the hearing, was substantially similar to §119.07(3)(o). The subcommittee heard favorable testimony from Philip H. Trees, a private attorney who had represented Orange County, and Jim Wolfe, General Counsel for the Florida League of Cities. These witnesses testified regarding requests by opposition attorneys for governmental litigation files, among other things. The subcommittee also heard testimony opposing the bill from Barry Richard, representing the Florida Press Association. Significantly, the tape of the hearings reveal that the subcommittee members (particularly Representatives Sample and Easley), noted that the only person who would be denied the litigation materials was the opposing attorney and that the Public Records Act, as construed by the Florida courts, would prevent an attorney from keeping his governmental client properly informed. Representative Murphy noted that he was not aware that legal research and personal notes might be available to opposing counsel under the present Act. Representative Murphy noted in a question to Mr. Richard that an opposing counsel could request a judge to look at the documents under §119.07(2)(b) even if the legislature were to adopt the amendment.

A hearing before the full House Judiciary Committee was held

on April 17, 1984. The committee heard testimony from Mr. Trees and Mr. Wolfe. Mr. Wolfe advised the committee that decisions in the Second, Third, and Fourth District Court of Appeals had denied any exemption under the Public Records Act for governmental attorney/client communications. He also advised that the courts had suggested that the legislature needed to review the matter. Representative Dunbar advised the committee that he had represented public bodies for over twelve years and the only request to him under the Act had been by opposing counsel and not by any members of the media. Representative Simon questioned Mr. Wolfe on whether the amendment would preclude the courts from ordering production of all records. Mr. Wolfe advised him that the amendment would not amend the rules of discovery. The amendment was approved with some substitute amendments to make it apply to administrative hearings and to strike the automatic sunset provision.

A review of the committee hearings reveals that the legislature's action was in response to the decisions of the Florida appellate courts. The intent was to remedy the effect of those decisions and to give a limited exception to the Public Records Act for communications between governmental entities and their attorneys. The amendment was unquestionably remedial in nature and was carefully drafted to provide this limited exception.

The legislature history of Florida Statute §119.07(3)(o)(1984) clearly shows that it is a remedial or procedural statute and thus should be retrospectively applied. It

was the intent of the legislature to remedy the application of Chapter 119 in view of the interpretation of Chapter 119 by the Florida appellate courts. The effect of this amendment is to remedy a misinterpretation of the law concerning the attorney/client privilege while not denying total access to records which are not privileged under the exception. Section 119.07(2)(b) allows opposing counsel to request the trial judge to review the documents to determine if the material is privileged.

The legislative history of Fla. Stat. §119.07(3)(o)(1984) makes it clear that the legislature in fact believed pre-existing Florida Statutes created a permanent exception to the Public Records Act. The attorney/client privilege set forth in the Florida Evidence Code is a statutory exception to the Public Records Act as required by Wait vs. Florida Power & Light Company, 372 SO.2d 420 (Fla. 1979). City of Tampa vs. Titan Southeast Const. Corp., 535 F.Supp. 163 (MD Fla. 1983) correctly held that Fla. Stat. §90.502 prohibited disclosure of attorney/client matters under the Public Records Act since it was a statutory exception.

Apparently this Court felt there was merit to the argument that Fla. Stat. §90.502 created a statutory attorney/client exception to public records disclosure in City of North Miami. However, this Court presumed, apparently without argument regarding the legislative history of Fla. Stat. §119.07(3)(o), that a public records exemption was not created by Fla. Stat. §90.502 since a specific exemption was codified by Fla. Stat. §119.07(3)(o). In light of the legislative history set forth

above this Court should reconsider its earlier position. This presumption, like any other evidentiary presumption, vanishes in light of the legislative history behind Fla. Stat. §119.07(3)(o). See, Gulle vs. Boggs, 174 SO.2d 26 (Fla. 1965).

The legislature enacted Fla. Stat. §119.07(3)(o) to remedy what it felt were earlier misinterpretations of existing law. The legislature was concerned that courts were not properly applying the attorney/client privilege. Fla. Stat. §119.07(3)(o) did not create a "new" privilege which did not previously exist. The committee hearings also reveal that the exemption of Subsection (o) was made temporary only because of the Committee's concern for Florida's "Government in the Sunshine" law, §286.011 Fla. Stat. (1983).

It is important for this court to give trial courts and appellate courts guidelines on how to apply Florida Statute §119.07(3)(o)(1984). This question will frequently reoccur and needs clarification by this court. Attorneys representing public entities must know what records will be privileged and what records will not be privileged so that they can communicate with their clients confidentially on sensitive matters. A clear uniform rule of application will prevent conflicting procedural decisions by trial courts all over the state of Florida. It is essential for governmental entities to enjoy the attorney/client privilege in a growing, litigious society. Allowing disclosure of sensitive and confidential attorney/client documents is a mortal blow to governmental entities which must agressively defend themselves against an ever mounting avalanche of lawsuits. It is

totally unfair and inequitable to treat governmental entities as "second class citizens" by requiring them to provide all of their litigation strategies, suit reports and evaluations to their opposition when the legislature has mandated that such documents are privileged.

The retrospective application of remedial legislative changes to existing statutes is not a novel idea. This court has frequently applied retroactive legislation to pending cases. See, e.g., Village of El Portal sv. City of Miami Shores, 362 So.2d 275 (Fla. 1978) (application of §768.31 Fla. Stat. to a municipality); Summerlin vs. Tramell, 290 So.2d 53 (Fla. 1973) (procedural burden of proof); Tel Service Company vs. General Capital Corporation, 227 So.2d 667 (Fla. 1969) (measure of damages under §687.11 Fla. Stat.). This Honorable Court should remand for retroactive application of the attorney/client privilege. This court should also instruct the lower court to prevent disclosure of any attorney/client documents regardless of the date of their creation.

ISSUE II

CHAPTER 119, FLA. STAT. (1983) SHOULD BE INTERPRETED TO AVOID CONFLICT WITH THE FLORIDA BAR CODE OF PROFESSIONAL RESPONSIBILITY, DISCIPLINARY RULE 7-101 AND ETHICAL CONSIDERATIONS 7-7 AND 7-8.

This court has constitutional authority to regulate the practice of law. Art. V, §15, Fla. Const. The Florida Bar Code of Professional Responsiblity was promulgated by this court pursuant to its constitutional authority to regulate attorneys in the practice of law. In re: Integration Rule of the Florida Bar, 235 So.2d 723 (Fla. 1970). Ethical consideration 7.7 provides in pertinent part:

> "In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the frame work of the law, such decisions are binding on his lawyer. ..."

Ethical consider 7-8 provides in pertinent part:

> "A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations. A lawyer should advise his client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective view point. ..."

Disciplinary rule 7-101 provides in pertinent part:

> "A lawyer shall not intentionally:
>
> (3) Prejudice or damage his client during the course of the professional relationship, ..."

The effect of the Public Records Act, as interpreted by the

lower Appellate Court, is to encourage an attorney not to advise his client of the progress of the litigation or the possible alternatives or available strategies to prosecute the case. E.C. 7-7 and E.C. 7-8 direct and encourage an attorney to keep his client well informed so that the client can make informed decisions on important litigation matters. The Public Records Act, as presently interpreted by the lower court, conflicts with this responsiblity. As presently interpreted, written communications, assessments, recommendations, opinions and conclusions of fact and law made by the attorney and provided to the governmental client must be produced. Legal research furnished to the governmental client must also be produced. See, e.g., Brevard County vs. Nash, 468 So.2d 240 (Fla. 5th DCA 1984); Miami Herald Publishing Company vs. City of North Miami, 452 So.2d 572 (Fla. 3d DCA 1984); Edelstein vs. Donner, 450 So.2d 562 (Fla. 3d DCA 1984); Orange County vs. Florida Land Company, Supra.; Hillsborough County Aviation Authority vs. Azzarelli Construction Company, Inc., 436 So.2d 153 (Fla. 2d DCA 1983). In determining how to provide information and materials to his governmental client, the attorney is given an anomolous "chinese choice". By providing written material and information to his governmental client, the attorney subjects his client to production of sensitive and confidential material under the Public Records Act. Advising a client in writing causes the attorney to involuntarily violate DR 7-101(A)(3). Disclosure of litigation theories, suit reports, etc., will most certainly prejudice or damage his governmental client when this written information is produced to

the opposing counsel in the lawsuit. There can be little doubt that the unfettered production of the suit reports, litigation analysis, etc. sought by the Respondent in the case at bar will certainly prejudice or damage the Petitioner, City of Orlando, and thus place its attorneys in violation of DR 7.101(A)(3).

An attorney cannot effectively communicate with his client solely by oral means and it is manifestly necessary to write suit reports, deposition summaries and other essential documents to adequately advise a client. From a public policy standpoint the Public Records Act should be interpreted by this court in a manner which does not require attorneys to violate the code of professional responsiblity. Retrospective application of this statute eliminates this conflict.

ISSUE III

THE REQUEST TO PRODUCE WAS IMPROPERLY MADE UNDER §119.021, Fla. Stat. (1983).

Respondent's Request to Produce dated July 23, 1984 was served upon the Division of Risk Management, the City of Orlando, Florida, in care of attorney Steven F. Lengauer, attorney-of-record for the Petitioner. Section 119.021, Fla. Stat. (1983) designates the proper custodian of public records as

> The elected or appointed state, county or municipal officer charged with the responsibility of maintaining the office having public records, or its designee, ...

The Division of Risk Management is not charged with maintaining, and does not maintain, the entire litigation file regarding the lawsuit pending in the trial court. Neither is Steven F. Lengauer, attorney-of-record for the Petitioner, a designated custodian of the records or the litigation file for the City of Orlando. Respondents have failed to follow the requirements of the Public Records Act for inspection of public records. The request for production should be quashed because it is not directed to the proper legal custodian of the record as required by Chapter 119, Fla. Stat. (1983).

CONCLUSION

Fla. Stat. §119.07(3)(o)(1984) was enacted as a remedial measure in response to appellate court decisions which failed to give effect to the attorney/client privilege. The statute is procedural on its face since the ultimate effect of Subsection (o) is merely to delay the disclosure of attorney/client confidences. Fla. Stat. §119.07(3)(o)(1984) does not permanently prevent disclosure of governmental attorney/client documents - it merely affects the timing and procedure for obtaining these records. In order to prevent unfair prejudice to governmental litigants, a privilege is given to attorney/client documents until completion of the litigation. The legislative history behind Fla. Stat. §119.07(3)(o) clearly establishes its remedial and procedural nature. Subsection (o) should be applied retroactively.

Furthermore the Respondent has failed to address his public records request to the proper legal custodian as required by Fla. Stat. §119.021(1983). This court should interpret the Public Records Act in a manner which promotes compliance with the attorney's obligation under the Code of Professional responsibility to keep his client informed about litigation matters. The "chinese choice" between keeping a client in the dark or prejudicing litigation strategies should be eliminated. Subsection (o) should be applied retroactively by this court. This court should reverse and remand with instructions to prevent disclosure of attorney/client documents.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail delivery to: WILLIAM FERNANDEZ, 1309 E. Robinson Street, Orlando, Florida 32801 and ROBERT MIXSON, Post Office Box 6086-C, Orlando, Florida 32853 this 8th day of February, 1986.

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