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SID J. WHITE

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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

SUPREME COURT OF FLORIDA

TIMES PUBLISHING COMPANY
Petitioner,

v.

CASE NO. 84-513

RICHARD AKE, CLERK, ETC.
Respondent.

_____ /

AMICUS CURIAE BRIEF

OF MONROE W. TREIMAN

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Comes now, MONROE W. TREIMAN, in his own proper person, and files this Brief pursuant to permission granted by this Court, and says:

1. The undersigned has long been a crusader for open public records, unfettered by unnecessary demands of the Public Official, and at a price that is reasonable. This Crusade has led to many confrontations with various agencies, and several legal actions in Circuit Courts. This position, as a crusader, has placed him in contact with a great many people, and much public feedback. Therefore, the undersigned believes he can file this Brief, as one representing the Public interests.

2. The Parties to this Case have very ably represented their interests, being that of a Metropolitan Newspaper, and a Public Official who has custody of Court Records. The undersigned hopes that this Brief will represent the People.

3. It is understood that the Court often decides issues on the narrowest grounds possible, but this often obscures many other issues that need to be decided. Undersigned hopes that this Court

will use this case as a vehicle for establishing the rules that will govern the Public access to Judicial Records, remembering that access often is dictated by the cost charged for copies.

4. The Legislature of Florida has set forth the price to be charged for copies of Public Records, either legal or letter size, to be 15 cents per page, as provided for in F.S. §119.07(1)(a). This is a price the Public can live with. It is understood that in many cases there is a need for a higher charge for special conditions. One of these is the \$1.00 per page for Copies of the Official Records Books, as is provided for in F.S. §28.24(8)(a), which is not in dispute here.

5. The DCA in the Case now under review, held that the provisions of Ch. 119. F.S. do not apply to the Judicial Records of the Clerk of Circuit Court. If this was to be affirmed by this Court, then there are numerous other provisions of Ch. 119. F.S., such as Penalty F.S. § 119.02, Keeping, Copying or Repairing the Records F.S. § 119.021, Disposition of Records F.S. 119.05, the right of inspection F.S. 119., Photographing of Records F.S. 119.08, Accelerated Hearing F.S. 119.11, and others.

6. The DCA in this case further held that the Florida Legislature may not make any law that would affect the Judicial duties of the Clerk of Circuit Court in his duties as Clerk of the Courts. If this is upheld, then none of the provisions of Ch. 28. F.S. would apply to the Clerks, and there would be no statutory authority for the charging of any fee for copies. Furthermore, the filing fees set by the Legislature are also Unconstitutional, as are other laws affecting the Clerk in his Court duties.

7. Undersigned is aware of the provisions of Rules of Judicial Administration, Rule 2.051, this Rule is a good start, but does lack the answers to many questions. Is the Supreme Court going to specify the price of Copies? Who will set the filing fees for the cases filed in Court? How will access to Records be Guaranteed, for example the Clerk of Circuit Court in Pinellas County permits Pinellas County Attorneys of Record, to check a Court file out for up to 5 days. What happens when one interested in copies of records in this file requests same from the Clerk. The Attorney can make as many copies as he desires from the file on his own copying machine, whereas the Public presently pays \$1.00 per page. This pricing schedule is very unfair to the public.

8. This Court has on numbers of occasions, taken a simple case and used it as the basis for a complete review of the subject, I personally remember this being done in TREIMAN v. STATE, 343 SO 2d 819, in which the status of Non Attorney County Judges was reviewed in some depth, including the transcript of courses taken by me in the University of Florida College of Law.

9. There is a long line of Attorney Generals Opinions on the appropriate charge the Clerks of Circuit Court should make for Copies. Undersigned adopts the Legal Reasoning of The Attorney General in his Opinions 85-80, 91-76, and 94-60. It should be further noted that Opinion 91-76, was given to the Clerk in Pasco County to settle the Lawsuit the undersigned had filed on Public Records, both sides agreed in advance to abide by the Attorney Generals Opinion.

10. The Clerks of Circuit Court does have an Official Organization, and the Executive Director, Robert Alderman, said in a press release of the results of a survey made by him, that since the passage of Ch. 94-348, Laws of Florida that

12% of the Clerks charge 15 Cents for all copies.

43% of the Clerks charge \$1.00 for all copies.

26% of the Clerks charge \$1,00 for copies of official records, and 15 Cents for all other documents.

These figures were from replies made by 63 of the 67 Clerks.

11. It cannot be denied that the price of copies from Florida Clerks is not uniform in any way. If this is indeed, a government by Law, and not by Men, then we have many uninformed as to the Law, or who rely on information of dubious value.

12. The Clerk in Pinellas, advises it is the Court Decision in the case of HENNINGER v. DeBLAKER, as Clerk, Case 86-2267-12, it is of interest that this case was litigated completely on access to records, not on price, and yet the Judge, in his Peremptory writ of Mandamus, inserted a final sentence referring to the price set forth in F.S. 28.24(8)(a). It is of further interest that other Clerks in the State point out to this case as controlling over the Attorney Generals Opinions.

13. In summation, the undersigned believes that it is time that the Supreme Court makes a full and comprehensive decision as to how the Public can gain Access to Public Records of the Courts, and the price that they must pay, remembering that the Public sees at all hands the availability of Copies for 1 Cent, 2 Cents, 2 for 5 Cents, and 10 cents. It should be remembered that the filing fees, and taxes pay for all of the services the Clerk renders. The

member of the public can request the file, and look it over without there being a charge, The simple making of a photocopy is not in any way worth a Dollar. The Dollar price is particularly onerous when the copies needed is in the hundreds. The undersigned has personally handled requests for 350, 340, and 210 pages. The meaningful access of the public can be denied on the basis of price alone.

14. Since it is well settled that the Supreme Court is the head of the separate, co-equal branch of Government, namely the Judicial Branch, the Supreme Court has the duty to see that the Judicial system operates uniformly over the State. In the Case now before the Court, the DCA said that in the performance of duties as court's record keeper, clerk is ministerial officer of court devoid of discretion, if this be true, then the public finds it amazing that the various Clerks seem to follow any law they wish, charge varying fees, and receive no direction from their Boss, the Supreme Court of Florida.

CONCLUSION

The price charged for copies in the Clerks custody, as Judicial Records, varies widely over the State.

The DCA Opinion says that the Legislature may not make Laws regarding the Judicial duties of the Clerk.

This Court has not addressed the question of the correct amount that may be charged for copies of Court Records, and this fact leaves a vacuum, which the Supreme Court is obligated to fill.

This Court should use this case as a vehicle to once and for all settle the controversy as to the cost of copies of the Judicial Records in the possession of the Clerks of Circuit Court, as well as to the appropriate procedure for the settlement of controversies between the Clerks and others who may wish copies of Judicial Records.

This Court should also use this case as a vehicle to set forth the bounds in which the Florida Legislature can pass laws that affect the Clerk, ranging from the cost of copies to filing fees.

RESPECTFULLY SUBMITTED.

I certify that copies of the foregoing were mailed to Leslie E. Joughin, III Esquire, McWhirter, Reeves, McGlothlin, Davidson & Bakas, P.A., 100 North Tampa Street, Suite 2800, Tampa, Florida 33601-3350; Allison M. Steele, Esquire, Rahdert & Anderson, 535 Central Avenue, St. Petersburg, Florida, 33701; Lorence Jon Bielby, Esquire, Post Office Drawer 1838, Tallahassee, Florida 32302, on this 11th Day of January 1995.

Monroe W Treiman

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