IN THE SUPREME COURT OF FLORIDA

NO. SC04-2246

In re:

Petition of The Florida Bar
To Amend the Rules Regulating the Florida Bar

COMMENTS OF THE UNITED STATES ATTORNEYS FOR THE DISTRICTS OF FLORIDA ON THE PROPOSED AMENDMENTS TO RULES 4-3.3, 4-3.6, 4-3.8 AND THE ASSOCIATED PROPOSED COMMENTS

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The United States Attorneys for the Southern District of Florida, the Northern District of Florida, and the Middle District of Florida respectfully submit their comments on the Petition of The Florida Bar to Amend the Rules Regulating the Florida Bar and respectfully recommend and seek the rejection or modification of proposed amendments to Rules 4-3.3, 4-3.6, and 4-3.8 of the Rules Regulating the Florida Bar (hereafter "the Rules" or, in the singular, "Rule"), as set forth herein.

Our chief concern is with proposed additions to Rule 4-3.8, Special Responsibilities of a Prosecutor. Like our fellow prosecutors in state court, see Comments By the Florida Prosecuting Attorney's Association, we oppose the addition of amended Rule 4-3.8(b) and new Rule 4-3.8(e).

Rule 4-3.8(e): SPECIAL RESPONSIBILITIES OF A PROSECUTOR

Proposed new Rule 4-3.8(e) would require that prosecutors "not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes: (1) the information sought is not protected from disclosure by any applicable privilege; and (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution." (App.B:246:4466-74.)[1] We respectfully ask the Court not to impose on prosecutors this "responsibility," which is actually an unwarranted special

[1] We refer to the Petition's lettered Appendices, followed by page and line numbers.

protection for lawyers whose non-privileged evidence and testimony could otherwise assist the sovereign to investigate, solve, and prosecute crimes. We believe that this proposal would hinder and impede the criminal justice system and proper law enforcement. As its stated purpose of limiting the issuance of lawyer subpoenas in grand jury and other criminal proceedings demonstrates,[2] this proposal is not a content-neutral ethics provision. Rather, it seeks to rebalance the competing interests of the prosecution and the defense in favor of the defense. It also conflicts with United States Supreme Court law, with other federal caselaw, and with rules that govern the practice of our offices. It is not susceptible to proper enforcement by The Florida Bar, and it seems likely to foment undesirable litigation in federal criminal cases and investigations.

This new Rule would put out of reach a lawyer's evidence – even if it is relevant to a crime and not protected by attorney-client or any other privilege – unless it was "essential to the successful completion" of a criminal investigation or prosecution. No other type of lawful, non-privileged evidence of a crime is subject to such an "essentiality" test or made similarly inaccessible to law enforcement. The proposed addition is contrary to "the longstanding principle that 'the public . . . has a right to every man's evidence,' except for those persons protected by a constitutional,

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[2] The corresponding proposed addition to the Rule's Comment, which we also oppose, states: "Subdivision (e) is *intended to limit the issuance of lawyer subpoenas* in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship." (App.B:248:4503-05 (emphasis added).)

common-law, or statutory privilege[.]" *See Branzburg v. Hayes*, 408 U.S. 665, 688 (1972) (quoted; quoting Blair v. United States, 250 U.S. 273, 282(1919)). It does not enhance but rather detracts from the stature of the legal profession, whose duty to obey the law should be no less than that of other citizens (like the newspaper reporter who sought exemption from the rules of evidence-compulsion in *Branzburg*).

The justification for adding this provision is said to be that it "provide(s) additional protection to clients[.]"[3] (App.D:175:5159-60 (Report to The Florida Bar Board of Governors by the Special Committee to Review the ABA Model Rules 2002) .) Setting aside the incorrect premise that in criminal cases only the defense has a client (actually, the prosecution represents the People of the state or federal sovereign, and their collective right to be protected and to have redress from crime), this justification overlooks or would simply rewrite the extensive jurisprudence regulating the amount of protection afforded clients from having evidence obtained from their lawyers. The caselaw, both state and federal, setting parameters on the attorney-client privilege is too well known and voluminous to need citation to this Court. We simply note that the proposed addition is at odds with two of the most fundamental principles of privilege law – the principle that privileges, being in derogation of the search for truth, must be narrowly construed, *see, e.g., United States v. Nixon*, 418 U.S. 683,

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[3]The full comment ("The committee is in favor of the proposed additions [to Rule 4-3.8] because they provide additional protection to clients and ensure that clients at least have the opportunity to be represented by counsel in criminal proceedings") relates to both proposed additions to Rule 4-3.8, at (b) and (e); the second part of the stated rationale relates only to (b), discussed *infra*.

710 (1974); *accord Fisher v. United States*, 425 U.S. 391, 403 (1976) (since the attorney-client privilege "has the effect of withholding relevant information from the factfinder, it applies only where necessary to achieve its purpose"), and the principle that the burden of establishing application of a privilege rests with the party asserting the privilege,[4] *see, e.g., Hodges, Grant & Kaufman v. United States*, 768 F.2d 719, 721, 721 n. 7 (5th Cir. 1985).

The proposed addition is contrary to federal law concerning grand juries. For instance, in *United States v. R. Enterprises, Inc.*, 498 U.S. 292, 292-303 (1991), the Supreme Court reversed for error a requirement that the government show relevance of a grand jury subpoena as a condition for its enforcement. The Supreme Court rejected such a requirement for many reasons, including the obvious ones that the purpose of a grand jury is to investigate whether to bring charges and that "[o]ne simply cannot know in advance whether information sought during the investigation will be relevant and admissible in a prosecution for a particular offense." *Id.* at 300. It also noted the grand jury's venerable and unique role, and its function "to inquire into all information that might possibly bear on its investigation until it has identified an offense or has satisfied itself that none has occurred." The Supreme Court further

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[4] Although we readily agree that information protected by a recognized privilege, such as the attorney-client privilege, cannot be compelled, the proposed Rule, by making it the prosecutor's responsibility to "reasonably believe[] (1) the information sought is not protected from disclosure by any applicable privilege[,]" states the rule backward and appears to shift the burden. Thus, we oppose both parts (1) and (2), and the entirety of proposed new paragraph (e) of Rule 4-3.8.

stated, "'A grand jury investigation "is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed."'" *Id.* at 297 (quoting *Branzburg*, 408 U.S. at 701, which quoted *United States v. Stone*, 429 F.2d 138, 140 (2nd Cir. 1970)). Yet, the proposed addition would erect a threshold for a grand jury subpoena – essentiality to the completion of the investigation – that is (1) higher than the mere relevance standard that the Supreme Court of the United States found impermissible for grand jury subpoenas, *see R. Enterprises, Inc.*, 498 U.S. at 297-300, and (2) even higher than the relevance standard prescribed for a criminal trial subpoena under Fed.R.Crim.P 17(c), *see Nixon*, 418 U.S. at 700-09; *Stern v. U.S. District Court*, 214 F.3d 4 (1st Cir. 2000).[5]

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[5] *Stern* is especially on point. In *Stern*, the First Circuit invalidated an ethics rule, applied to federal prosecutors by incorporation into the federal district court's local rules, which sought to constrain the issuance of subpoenas seeking client-related information from lawyers in criminal cases. (All three of Florida's federal district courts incorporate the Rules Regulating the Florida Bar into their respective local rules.) The rule stricken in *Stern* had an essentiality requirement like the proposed addition here; it also had other features, not present here, including requirements for advance judicial approval and that the information sought be otherwise unobtainable.

Stern's rationale and its careful treatment of the issues and history of attempts to engraft substantive legal hurdles on prosecutions through bar rules, are largely applicable here. *Stern* concluded that the attorney-subpoena rule "impermissibly interfere[d] with grand jury proceedings[,]" adversely impacted grand jury secrecy, and was a potential "incubator for delay" by saddling grand juries with mini-trials and preliminary showings. *Id.* at 16. Consequently, *Stern* held "that Local Rule 3.8(f), as it pertain[ed] to grand jury subpoenas, encroache[d] unduly upon grand jury prerogatives and, therefore, [was] *ultra vires*." *Id.* Outside

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Not only is the proposed addition's essentiality standard in conflict with these and other federal cases,[6] it would be undesirable even if the slate were clean. The public and, particularly, victims of crime deserve better. If a swindler turns over business records to a third party, the swindler's victims' entitlement to a thorough, unfettered criminal investigation and examination of those records should not turn on whether the third party was a lawyer. *See, e.g., Grant v. United States*, 227 U.S. 74, 79-80 (1913). How would we prosecutors explain to crime victims or to the public whom we as prosecutors serve that we had to stop short of seeking lawful, non-privileged evidence of a crime, because The Florida Bar said that it would be unethical for us to strengthen our case?

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[5](...continued)
the grand jury context, *Stern* determined that the rule imposed an essentiality requirement "substantially more onerous (and, thus, more restrictive) than the traditional motion-to-quash standards" and imposed "novel requirements that threaten to preclude the service of otherwise unimpeachable subpoenas and thus restrict the flow of relevant material evidence to the factfinder." *Id.* at 18. *Stern* recognized that the rule, if permitted to stand, would "make it measurably more difficult for prosecutors to secure convictions." *Id.* Thus, *Stern* concluded that, even outside the context of the grand jury: "The magnitude of this new burden is simply too large to be imposed by local rule." *Id.* "Accordingly, [*Stern* held,] the rule cannot stand." *Id.* at 18.

[6] *See, e.g., Impounded*, 241 F.3d 308 (3rd Cir. 2001) (district court erred by imposing limits on grand jury subpoena stricter than traditional bounds of attorney-client privilege); *Baylson v. Disciplinary Board of the Supreme Court of Pennsylvania*, 975 F.2d 102 (3rd Cir. 1992) (striking down an attorney-subpoena rule constraining prosecutors); *see also United States v. Williams*, 504 U.S. 36 (1992) (prosecutorial-misconduct doctrines may not be used to change or circumvent historic nature and breadth of grand jury's function, powers, and accusatory character).

Moreover, "essentiality" would not be easy to determine. As *R. Enterprises*, 498 U.S. at 297, notes, it is impossible to quantify the value, and thus the essentiality, of sought evidence at the investigative, grand-jury phase, "because the very purpose of requesting the information is to ascertain whether probable cause exists." The situation is hardly easier post-indictment. The government's burden of proof in a criminal case is the highest known to the law – beyond a reasonable doubt. With such a strict standard, surely essentiality would have to encompass more than the quantum of evidence that merely permits a case to edge past a directed verdict or merely permits a case to reach a "more likely than not" threshold, 51 % proof of guilt. What, then, would be the quantum? Would a prosecutor violate the proposed Rule by seeking evidence that the prosecutor believes would raise the prospect of conviction from 60 % to 80%? What if the prosecutor seeks evidence to raise the prospect of conviction to 90%? Would the prosecutor then have slipped over the line into a disciplinary violation?

These troubling rhetorical questions point to another weakness of the proposed addition: It is incapable of proper enforcement. Assessment of the stated standard of a prosecutor's reasonable belief in the essentiality of sought evidence would embroil The Florida Bar in close scrutiny of criminal investigations. This would be highly inappropriate given the American tradition of grand jury secrecy, which, although it is codified for federal grand juries in Fed.R.Crim.P.6(e), has its roots in the United States Constitution, *see United States v. Sells Engineering, Inc.*, 463 U.S. 418, 425 (1983).

It would require The Florida Bar in litigation somehow to define the vague, discretion-laden generality of essentiality. Indeed, the proposed addition would likely engender collateral disputes and litigation in federal criminal cases, as reflected in the cases cited above. This Court, historically and properly, has been concerned with whether proposed Rules Regulating the Florida Bar can be enforced and enforced uniformly. *See Amendments to Rules Regulating The Florida Bar - Advertising Rules*, 762 So.2d 392, 405 (Fla. 1999) (Wells, J, concurring and dissenting: "[W]e must not have advertising regulations which are not enforced or are selectively enforced. . . . [S]uch limitation must fairly and effectively limit *all* Florida lawyers – not just those who voluntarily comply[.]"); *see also Florida Bar Re Amendments to Rules Regulating The Florida Bar*, 624 So.2d 720, 722 (Fla. 1993) (This Court rejected proposed rules addressing lawyers' discriminatory employment practices for pragmatic reasons applicable here: First, the subject matter already had been extensively addressed by existing state and federal law; second, the proposal would have required the Bar to investigate claims without clearcut standards of what would constitute a violation in a way duplicative of another body;[7] and finally, the Bar had neither the expertise nor the

[7] Here too the proposal is duplicative and unnecessary. The United States Department of Justice already has a proactive, rigorous process for screening and testing federal prosecutors' proposed subpoenas to attorneys. *See* United States Attorney's Manual, 9-13.410, copy attached, requiring all proposed subpoenas to attorneys relating to client-representation to be authorized by the Assistant Attorney General for the Criminal Division and prescribing exacting standards therefor, including that the sought information not be privileged; that it be reasonably needed for successful completion of the case; that the need for the information outweigh

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resources to undertake the investigatory and disciplinary effort necessary to accomplish the proposals' objectives.).

WHEREFORE the United States Attorneys for the Districts of Florida respectfully ask this court to reject proposed changes to the Rules Regulating the Florida Bar enacting new Rule 4-3.8(e) and its corresponding Comment, reflected at App.B:246:4466-74 and at App.B:248:4503-4505.

Rule 4-3.8(b): SPECIAL RESPONSIBILITIES OF A PROSECUTOR

We also object to and request rejection of proposed amended paragraph (b) of Rule 4-3.8, which would require prosecutors to "make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel[.]" (App.B:245:4452-54.) We believe that the Comments by the Florida Prosecuting Attorney's Association to the Proposed Amendments of Rule 4-3.8(b) and the Addition to the Rule of 4-3.8(e) cogently and fully address this point, and we

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[7](...continued)
potential adverse effects on the attorney-client relationship; and that the subpoena be narrowly drawn and limited in subject matter and time period.

The Department of Justice's willingness to regulate itself does not make our objections to the proposed Rule irrelevant. The internal guidelines' criterion of "reasonably needed" is less demanding than the proposed Rule's "essentiality" requirement. The internal guidelines do not burden prosecutors in the same way as the proposed Rule and are designed to prevent them from being used as a platform for litigation in criminal cases, unlike the proposed Rule. *See* discussion of Department of Justice guidelines at *Stern*, 214 F.3d at 12-13.

respectfully adopt and affirm our agreement with the arguments made therein. This provision would require prosecutors to perform or oversee a function traditionally carried out by courts and by interrogating or arresting police officers. Its "belt and suspenders" approach to criminal procedure is unnecessary and unwise, embroiling prosecutors in court responsibilities and in additional entanglements with unrepresented persons.

WHEREFORE the United States Attorneys for the Districts of Florida respectfully ask this Court to reject proposed changes to the Rules Regulating the Florida Bar enacting new Rule 4-3.8(b), reflected at App.B:245:4452-54.

Rule 4-3.3: CANDOR TOWARD THE TRIBUNAL

We object to, and request rejection of, the proposed addition to the Rule's Comment stating: "Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify." (App.B:226:4123-27.) This statement suggests some greater leeway for false testimony in criminal cases and that the duty of criminal defense attorneys with regard to false testimony is different from the duty of other attorneys. The law, however, steadfastly has resisted any double-standard for perjury in criminal matters, whether rationalized by Fifth Amendment

claims or otherwise. *See, e.g., United States v. Wong*, 431 U.S. 174 (1977). Indeed, in its Report to The Florida Bar Board of Governors, the Special Committee to Review the ABA Model Rules 2002 itself acknowledged that there should be no difference between the ethics of a criminal lawyer and a civil lawyer. (App.D:155:4576-79.)

To the extent that the proposed addition seeks to distinguish between testimony which a lawyer "knows" to be false as opposed to testimony which a lawyer "reasonably believes" to be false, that is not a distinction special to criminal defense lawyers. The Special Committee made this point explicitly in its Report: "The requirement that the lawyer can and should refuse to allow false testimony is good and should be added to the Florida rule. However, there should be no difference between the ethics of a criminal lawyer and a civil lawyer. If a criminal lawyer reasonably believes that the client is going to present false testimony the duty of that lawyer should be the same as the duties imposed upon the civil lawyers." (App.D:155:4575-79.) By nonetheless making such a distinction, and by grounding it in "special protections historically provided criminal defendants," the proposed Comment addition communicates a contrary, and incorrect, message, which is at odds with the Special Committee's own recognition that there should be equal treatment of civil and criminal lawyers in this regard.

WHEREFORE the United States Attorneys for the Districts of Florida respectfully ask this Court to reject proposed changes to the Rules Regulating the

Florida Bar adding to the Comment to Rule 4-3.3 the following statement, reflected at App.B:226:4123-27: "Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify."

Rule 4-3.6: TRIAL PUBLICITY

We object to, and request rejection of, the proposed addition to the Rule's Comment including, in a list of subjects the extra-judicial dissemination of which is more likely than not to have a material prejudicial effect on a proceeding, the following: "(f) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty." (App.B:238:4330-32.)

We recognize that it is desirable for the public to appreciate that a criminal charge is merely an accusation and the defendant is presumed innocent, and we frequently include such reminders in our press statements and press releases. However, we are concerned that the unqualified nature of this statement and its stigmatizing of a simple statement that a person is charged with a crime will be used unfairly against the government in hotly contested criminal litigation. Due to the legitimate public and press interest in many of our cases, we field hundreds of press

inquiries, ranging in formality from televised press conferences to simple voice-mail queries from reporters. The requirement that every time we respond to such an inquiry we make the specified disclaimers is unwieldy and unnecessary. (In comparison, a trial court has a duty to instruct the jury on such matters – but not every time there is an allusion to a defendant being charged with a crime.)

We appreciate that the statement we object to is in the Comment, not the Rule, and that "comments are offered for explanation and guidance only and are not adopted as an official part of the rules," *Amendments to Rules Regulating the Florida Bar – Rules 4-7.2 & 4-7.5,* 690 So.2d 1256, 1257 (Fla. 1997) (per curiam). Comment, however, can migrate into the Rule, as happened with the attorney-subpoena rule historically, *see Stern,* 214 F.3d at 8. Also, Comment certainly can be used offensively in the criminal court arena. Our prosecutors do not deserve to face allegations of misconduct for omissions by our press officers of the disclaimers contemplated by the proposed Comment; under the proposed Comment, a prosecutor may face such an accusation merely because a press officer omits to answer a seasoned reporter's follow-up inquiry as to which counts are charged against which defendant with yet another iteration of the disclaimer of presumption of innocence.

The Florida Bar may not have intended such a consequence with this amendment, but its language is unqualified and provides a platform for unwarranted quarrels.[8] We respectfully request that it be rejected.

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[8] Our offices' strict regard for ethics requirements, our public visibility, and

(continued...)

WHEREFORE the United States Attorneys for the Districts of Florida respectfully ask this Court to reject proposed addition to the Comment to Rule 4-3.6 of sub-paragraph (f), reflected at App.B:238:4330-32.

CONCLUSION

The United States Attorneys for the Districts of Florida respectfully ask that the following proposed amendments to the Rules Regulating the Florida Bar be rejected or modified to meet the objections stated above:

- proposed new Rule 4-3.8(e) and its corresponding Comment, reflected at App.B:246:4466-74 and at App.B:248:4503-4505;
- proposed new Rule 4-3.8(b), reflected at App.B:245:4452-54;
- proposed addition to the Comment to Rule 4-3.3 of the language reflected at App.B:226:4123-27; and
- proposed addition to the Comment to Rule 4-3.6 of sub-paragraph (f), reflected at App.B:238:4330-32.

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[8](...continued)
our wish to avoid needless excuses for litigation lead us often to give a wide berth to ethical gray areas. For instance, we in Florida already labor under the nation's most constricting rules concerning contacts with represented persons. *See* Florida's Rule 4-4.2. Florida, unlike every other United States jurisdiction except Puerto Rico, has no exception for such contacts otherwise "authorized by law." This has led us to counsel law enforcement agents against constitutionally permitted contacts with potential witnesses in criminal investigations that would be permitted in every other state. We do not wish to create another widened "gray area" with this exhortation to avoid every extrajudicial statement of a charge unless it carries a prescribed addendum.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Comment of the United States Attorneys for the Districts of Florida on the Proposed Amendments to Rules 4-3.3, 4-3.6, 4-3.8 and the Associated Proposed Comments was delivered this 3rd day of January, 2005 to John F. Harkness, Jr., Executive Director, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300.

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Gregory R. Miller
United States Attorney for the
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Certificate of Compliance

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210(a)(3) because this brief has been prepared with Times New Roman 14-point font.

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Gregory R. Miller
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ATTACHMENT

UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEYS' MANUAL
TITLE 9 - CRIMINAL DIVISION
CHAPTER 9-13.000 OBTAINING EVIDENCE

9-13.410 Guidelines for Issuing Grand Jury or Trial Subpoena to Attorneys for Information Relating to the Representation of Clients

A. Clearance with the Criminal Division.

Because of the potential effects upon an attorney-client relationship that may result from the issuance of a subpoena to an attorney for information relating to the attorney's representation of a client, the Department exercises close control over such subpoenas. All such subpoenas (for both criminal and civil matters) must first be authorized by the Assistant Attorney General for the Criminal Division before they may issue.

B. Preliminary Steps.

When determining whether to issue a subpoena to an attorney for information relating to the attorney's representation of a client, the Assistant United States Attorney must strike a balance between an individual's right to the effective assistance of counsel and the public's interest in the fair administration of justice and effective law enforcement. To that end, all reasonable attempts shall be made to obtain the information from alternative sources before issuing the subpoena to the attorney, unless such efforts would compromise the investigation or case. These attempts shall include reasonable efforts to first obtain the information voluntarily from the attorney, unless such efforts would compromise the investigation or case, or would impair the ability to subpoena the information from the attorney in the event that the attempt to obtain the information voluntarily proves unsuccessful.

C. Evaluation of the Request.

In considering a request to approve the issuance of a subpoena to an attorney for information relating to the representation of a client, the Assistant Attorney General of the Criminal Division applies the following principles:

- The information sought shall not be protected by a valid claim of privilege.

- All reasonable attempts to obtain the information from alternative sources shall have proved to be unsuccessful.

- In a criminal investigation or prosecution, there must be reasonable grounds to believe that a crime has been or is being committed, and that the information sought is reasonably needed for the successful completion of the investigation or prosecution. The subpoena must not be used to obtain peripheral or speculative information.

- In a civil case, there must be reasonable grounds to believe that the information sought is reasonably necessary to the successful completion of the litigation.

- The need for the information must outweigh the potential adverse effects upon the attorney-client relationship. In particular, the need for the information must outweigh the risk that the attorney may be disqualified from representation of the client as a result of having to testify against the client.

- The subpoena shall be narrowly drawn and directed at material information regarding a limited subject matter and shall cover a reasonable, limited period of time.

See also the Criminal Resource Manual at 263.

D. Submitting the Request.

Requests for authorization are submitted on a standardized form to the Witness Immunity Unit, Office of Enforcement Operations, Criminal Division. (This form, "Request for Authorization To Issue A Subpoena To An Attorney for Information Relating To Representation of A Client," is set out in the Criminal Resource Manual at 264). When documents are sought in addition to the testimony of the attorney witness, a draft of the subpoena duces tecum must accompany the completed form.

The completed form and draft subpoena may be mailed to the Witness Immunity Unit, 1001 G Street, N.W., Room 945 West, Washington, D.C. 20001, or faxed to (202) 514-1468. Because of the sensitive nature of these requests, the Witness Immunity Unit will not accept completed forms and draft subpoenas over e-mail. The Witness Immunity Unit will respond to questions concerning attorney subpoenas

by telephone, (202) 514-5541.

E. No Rights Created by Guidelines:

These guidelines are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative or litigative prerogatives of the Department of Justice.