

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

STATE OF FLORIDA, FLORIDA
COMMISSION ON ETHICS,

Petitioner,

v.

STEPHEN MacNAMARA,

Respondent.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF, IF FILED.

CASE NO. 1D01-2627

01-1173EC

JBC

02 DEC 31 PM 12:49
FILED
CLERK OF COURT
FIRST DISTRICT
TALLAHASSEE, FLORIDA

Opinion filed December 30, 2002.

Petition to Review - original jurisdiction.

Daniel H. Thompson of Berger Singerman, Tallahassee; Craig C. Willis, Special Advocate for the Florida Commission on Ethics, Tallahassee; Attorneys for Petitioner.

Kenneth G. Oertel and M. Christopher Bryant of Oertel, Hoffman, Fernandez & Cole, P.A., Tallahassee; and Mark Herron, Tallahassee, Attorneys for Respondent.

PER CURIAM.

Petitioner, the State of Florida, Commission on Ethics, has petitioned this court for review of non-final orders of an administrative law judge denying discovery pursuant to Florida Rule of Appellate Procedure 9.100 and Florida Statutes

section 120.68(1). The administrative law judge ruled that the attorney-client privilege prevented discovery of the documents as well as invoices for services rendered to the client, documents describing the nature of those services, and interrogatory and deposition testimony concerning those services.¹

Respondent states he has obtained permission from his client to produce the information requested, conditioned on the redaction of the amount that Respondent was paid and the amount of his retainer. Given Respondent's willingness to produce these documents subject to these conditions, we remand to the administrative law judge to order production of the discovery sought by Petitioner, with the amount of fees paid and the retainer amount redacted. The amount of fees may be relevant to the potential penalty phase of this proceeding pursuant to section 112.317, Florida Statutes. Accordingly, we remand without prejudice for Petitioner to seek the amount of the retainer and fees charged to this private client during any relevant time periods, should Respondent be found in violation of section 112.311, et seq., Florida Statutes (the Code of Ethics for Public Officers and Employees).

¹ Generally certiorari review is not granted for orders denying discovery. See Adventure Marine and Outdoor, Inc. v. Brennan, 807 So. 2d 780 (Fla. 1st DCA 2002). However, the parties have briefed the issue, and due to the highly unusual concession made by Respondent, we are not prohibited from deciding this issue.

Petition granted, and the administrative law judge's orders granting Respondent's motion for protection, and order denying Petitioner's motion to compel, are quashed.

BOOTH, MINER and KAHN, JJ., CONCUR.