

11-117310-380

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

FILED  
JUN 11 2004  
PM 12:04

STATE OF FLORIDA, FLORIDA  
COMMISSION ON ETHICS,

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

Petitioner,

v.

CASE NO. 1D01-2627

STEPHEN MacNAMARA,

Respondent.

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Opinion filed June 10, 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. Specifically, the administrative law judge found that copies of contractual or retainer

agreements entered into by Respondent with a private client were protected by the attorney-client privilege. The administrative law judge also found that the privilege applied to invoices for services rendered to that client and to documents describing the nature of those services, as well as interrogatory and deposition testimony concerning those services.

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 trial court to compel 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).

REVERSED and REMANDED.

BOOTH, MINER and KAHN, JJ., CONCUR.