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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SHEILA KIESS,

Petitioner,

vs.

DOAH CASE NO.: 03-2287  
FIU CASE NO.: 03-01

JVL-Clos

FLORIDA INTERNATIONAL  
UNIVERSITY,

Respondent.

**PETITIONER'S RESPONSE TO ADMINISTRATIVE LAW JUDGE'S ORDER  
TO SHOW CAUSE AND FLORIDA INTERNATIONAL UNIVERSITY'S ORDER  
REMANDING CASE TO HEARING OFFICER**

COME NOW the Petitioner, SHEILA KIESS, by and through her undersigned counsel and files her Petitioner's Response to Florida International University's Order Remanding Case To Hearing Officer.

1. On February 16, 2004, Florida International University (hereafter FIU) President Modesto A. Maidique filed his Order Remanding Case to Hearing Officer and Denying Request for Oral Argument and Suggestion of Alternative Body to Make Determination.

2. The remand was based on two issues questioned by FIU:

a. The Administrative Law Judge's (hereafter ALJ) footnote 3 in his Recommended Order regarding the definition of employer in Florida Statute Section 112.19(1)(a). The footnote stated: "No issue was raised concerning FIU's status as an "employer" as that term is defined in Section 112.19(1)(a), Florida Statutes."

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b. The ALJ's statement on page 3 of his Recommended Order: "Unless otherwise indicated, citations to sections within Chapter 112 of the Florida Statutes, while citations to sections of Chapter 440 refer to the 1995 Florida Statutes."

3. On February 24, 2004, the ALJ issued an Order to Show Cause giving the parties until March 8, 2004 to file responses.

4. The Petitioner adopts in full the entirety of the ALJ's February 24, 2004 Order and in support responds as follows:

5. As to the definition of employer in Florida Statute § 112.19(1)(a):

a. The parties Joint Pre-Hearing Stipulation on page 3 stated as follows: **Facts Admitted Without Sworn Proof:** 1. Petitioner was a law enforcement officer employed full time by Florida International University. Clearly states that FIU was Petitioner's employer. [See also ALJ's Recommended Order p. 3 Finding of Fact # 1 and p. 2 Proposed Findings of Fact # 1 and 13 – Respondent's Proposed Recommended Order]

b. There are several references in the official transcript specifically on page 8, line 13; page 12, line 20; page 84, line 13 and page 85, lines 4 and 6 in which FIU is referred to or understood to be the employer herein.

c. Additionally, several references to FIU as the Employer are made in the Respondent's Exhibits entered in evidence at the hearing specifically Respondent Ex. # 1 (p. 1-3).

6. As far as the Judge's use of the 1997 Florida Statutes regarding §112.19(1)(a) and the 1995 Florida Statutes regarding Chapter 440 the Petitioner states:

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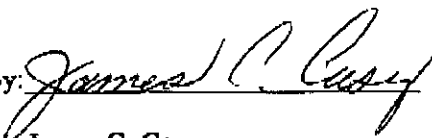
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a. The parties and the Judge discussed the appropriate statutes to refer to in regard to this matter. These discussions appear on page 23-31 of the Official Transcript. The parties and the Judge agreed to the following:

(1) The Alu-O'Hara Act §112.19(1)(a) was promulgated in 1996 and first appeared in the 1997 statutes and therefore reference to the 1997 statutes would have been clearly appropriate. [See also p 9 Conclusions of Law – Respondent's Proposed Recommended Order]

(2) The dates of the relevant injuries were September 1994 and January 1995 and therefore reference to Chapter 440 in Florida Statutes 1994 would also have been clearly appropriate.

WHEREFORE, Petitioner asserts that the issues raised on remand are clearly established by reviewing the entirety of the record and therefore the Remand by FIU should be declined.

By: 

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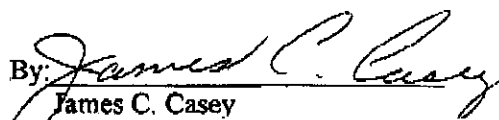
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was faxed and mailed this 25<sup>TH</sup> day February 2004 to Peter A. Blanco, Esquire, Attorney for Respondent, Kubicki Draper PA, 25 West Flagler Street, PH Suite, Miami, Florida 33130.

By:   
James C. Casey