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Page 1 of 3 Tuesday, April 17, 2001 3:37 AM

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
CASE NUMBER: 01-1017RU-WFO

WFO
JESSE TOCA V. HILLSBOROUGH TRANSIT AUTHORITY (HARTLINE)

**PETITIONER'S MOTION TO DISQUALIFY HARTLINE'S ATTORNEYS
AND TO SUPPRESS ALL INFORMATION AND EVIDENCE DERIVED
FROM VIOLATION OF THE ATTORNEY-CLIENT PRIVILEGE
WITH REQUEST FOR EX PARTE HEARING EN CAMERA UNDER SEAL**

The Petitioner, JESSE TOCA, pursuant to the provisions of Section 90.502(2), Florida Statutes (1999) (West Supp. 2000); the Second District Court of Appeal's decision in Rogers v. State, 742 So. 2d 827 (Fla. 2nd DCA 1999); and, the First District Court of Appeal's decision in Corry v. Meggs, 498 So. 2d 508 (Fla. 1st DCA 1986), hereby moves the presiding administrative law judge assigned by the Division of Administrative Hearings to Disqualify Hartline's Attorneys and to Suppress All Information and Evidence Derived from Violation of the Attorney-Client Privilege. In support, the Petitioner shows:

1. The Petitioner is a party to a privileged attorney-client relationship with the law firm of Stewart, Joyner & Jordan-Holmes, inasmuch as the Petitioner has a common interest with another person who is a client of said firm ("common interest privileged union"). See, Visual Scene, Inc. v. Pelkingotn Brothers, plc., 508 So. 2d 437 (Fla. 3rd DCA 1987); In re: LTV Securities Litigation, 89 F.R.D. 595 (N.D. Tex. 1981); Transmirra Products Corp. v. Monsanto Chemical Co., 26 F.R.D. 572 (S.D.N.Y. 1960).

2. Mr. Clark Jordan-Holmes and Ms. Karen McDonald, counsel of record for Hartline, are both members of the law firm of Stewart, Joyner & Jordan-Holmes.

3. During the course of the Petitioner's participation in common with another client of said law firm, the Petitioner has communicated and/or caused to be communicated confidential and privileged matters with such client as well as with said law firm. No other non-client parties or non-member of the common interest privileged union were, to the best of the Petitioner's knowledge, present during the course of any such communication(s). See, Visual Scene, Inc. v. Pelkingotn Brothers, plc., *supra*; Corry v. Meggs, *supra*.

4. On information and belief, Mr. Jordan-Holmes and Ms. McDonald, have disclosed to persons who are non-members of such common interest privileged union, information that was communicated by and/or on behalf of the Petitioner to a member of such common interest privileged union (as well as to members of the law firm aforesaid) that was intended to be completely in confidence.

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Page 2 of 3 Tuesday, April 17, 2001 3:37 AM

5. On information and belief, Mr. Jordan-Holmes and Ms. McDonald, have used directly and/or indirectly and/or derivatively, information that was communicated in confidence by and/or on behalf of the Petitioner to a member of such common interest privileged union (as well as to members of the aforesaid law firm), to suit their own selfish purposes.

6. The Petitioner is hereby seeking to stop Mr. Jordan-Holmes and Ms. McDonald from making any use(s) of such confidential and privileged communications without the Petitioner's prior informed consent. See, Rogers v. State, supra; Corry v. Meggs, supra; Visual Scene, Inc. v. Pelkington Brothers, plc., supra.

7. The Petitioner is hereby seeking to suppress any and all evidence derived from any and all use(s) of any such confidential and privileged communications without the Petitioner's prior informed consent. See, State v. Caballero, 510 So. 2d 922, 923 (Fla. 4th. DCA 1987). Cf. State v. Rutherford, 707 So. 2d 1129 (Fla. 4th. DCA 1997) (suppressing medical records obtained by state attorney in violation of defendant's right of privacy).

REQUEST FOR EX PARTE HEARING EN CAMERA UNDER SEAL

8. The Petitioner is prepared to disclose facts showing of the existence of the confidential and privileged relationship aforesaid at an *ex parte* hearing or proceeding *en camera* with all documents, including transcripts of such hearing or proceeding remaining under seal, in order to fully preserve the Petitioner's common interest attorney-client privilege. See, Calzon v. Capital Bank, 689 So. 2d 279, 280 (Fla. 3rd. DCA 1995) (the Third District Court of Appeal granted Ms. Calzon's Petition for Certiorari and remanded the case to the Circuit Court for Dade County with instructions for an *in camera* investigation into Ms. Calzon's and other petitioners' claim of work-product and attorney-client privilege). *Id.*

For the reasons set forth above, the presiding administrative law judge assigned by the Division of Administrative Hearings should enter an order:

A. Setting a prompt *ex parte* hearing or proceeding *en camera* with all documents, including transcripts of such hearing or proceeding remaining under seal, to consider and act upon this motion.

B. Disqualifying the law firm of Stewart, Joyner & Jordan-Holmes from representing or assisting Hartline in any manner whatsoever in connection with this case.

C. Setting a prompt Kastigar-type adversarial evidentiary hearing to compel Hartline to show that all information and evidence it has used or intends to use in any manner whatsoever, comes from a completely independent source in all respects. See, Kastigar v. United States, 406 U. S. 441 (1972). See also, State ex. rel. Hough v. Popper, 287 So. 282 (Fla. 1973).

2 of 3

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By e-mail to: kmcdonald@sjhlaw.com

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/s/Jesse Toca

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof was furnished by e-mail on April 17, 2001,
to:

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/s/Jesse Toca

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