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DIVISION OF LEGAL SERVICES
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Public Service Commission

June 5, 1997

Douglas Reynolds, Esquire
Cox & Reynolds
4875 N. Federal Highway, 10th Floor
Fort Lauderdale, FL 33308

Re: Docket No. 961321-WS - Application for certificates to provide water and wastewater service in Clay County by Point Water and Sewer, Inc.

Dear Mr. Reynolds:

I am writing this letter in response to our phone conversation and your May 16, 1997 letter to Lynal DeFalco, a Department of Environmental Protection (DEP) employee who is testifying on behalf of the Florida Public Service Commission staff in the above referenced docket. The letter and phone conversation related to your May 15, 1997 public records request of the DEP for water and wastewater records relating to Point Water and Sewer, Inc. During the inspection of Ms. DeFalco's files you discovered a draft working copy of her testimony that was to be filed in this proceeding. You then proceeded to question Ms. DeFalco about the draft document and dispute some of the statements made therein. As I stated in our phone conversation, I believe that you acted inappropriately by reading a draft working copy of my witness' (Ms. DeFalco) direct testimony and then questioning her on that working draft without my knowledge or consent. The questions, answers and comments on that draft are a result of my interviews with that witness and constitute my work product, produced in preparation of the litigation regarding the certification of Point Water and Sewer, Inc. That document is thus privileged attorney work product and protected from discovery by other attorneys in the litigation. Both the United States and Florida Supreme Courts have held that statements of witnesses secured by an attorney in advance of trial were immune from discovery because such a procedure would be contrary to the public policy underlying the orderly prosecution and defense of legal claims. Hickman v. Taylor, 329 U.S. 495 (1947); Surf Drugs, Inc. v. Vermette, 236 So. 2d 108 (Fla. 1970). The United States Supreme Court further noted that,

It is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. Hickman, at 510-511.

DOCUMENT NUMBER - DATE

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Douglas Reynolds, Esquire

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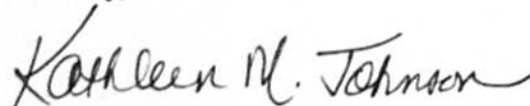
June 5, 1997

In the situation at hand, I was not able to even make the objection based on the work product privilege because you did not notify me that you had obtained my documents prior to your questioning of Ms. DeFalco on them.

In our phone conversation, you argued that you were entitled to those documents because they were a public record of the DEP, a public agency. As I stated in response, the work product of an attorney is specifically exempted from the public records law and therefore remains privileged. Section 119.07(3)(1), Florida Statutes.

As an attorney yourself, you should be familiar with the work product doctrine and the privilege it carries with it. You should have known that the document was my work product as soon as you discovered it in the DEP file and accordingly, should not have reviewed it. I believe that your conduct in this situation, whether intentional or inadvertent, prevented me from asserting my work product privilege, before the document was discovered, pursuant to both the Rules of Civil Procedure and the Public Records Law and has thereby violated my right to assert that privilege. I am hereby asserting that privilege at this time in order to bar the continued use of any of my work product documents that you may have discovered during your search of DEP files. I expect that you will return to me, on or before June 11, 1997, all copies of the draft testimony and any other work product document that you may have made. Thank you for your time.

Sincerely,



Kathleen M. Johnson
Staff Counsel

KMJ:mw

cc: Scott Schildberg, Esquire
J. Michael Lindell, Esquire
Division of Records & Reporting ✓
Division of Water & Wastewater