

IN THE SUPREME COURT OF FLORIDA

NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION,

Petitioner,

Case No.: SC09-1909  
Lt. Case Nos.: 1D09-4385  
2009-CA-002298

vs.

THE ASSOCIATED PRESS, ET AL.,

Respondent.

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**PETITIONER NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S  
RESPONSE TO RESPONDENTS' MOTION FOR ATTORNEYS' FEES  
RELATED TO PROCEEDINGS BEFORE THE FLORIDA SUPREME  
COURT**

Petitioner, National Collegiate Athletic Association ("NCAA") submits the following response to Respondents' Motion for Attorneys' Fees Related to Proceedings before the Florida Supreme Court.

**I. INTRODUCTION**

This is an appeal from a written decision of the First District Court of Appeals dated October 1, 2009, holding that the documents sought by Respondents were public records because they were "received" by representatives of Florida State University ("FSU") in the course of its official business for purposes of the Public Records Act, when remotely reviewed on the NCAA's website and used by GrayRobinson in its representation of FSU during its sanctions appeal. The

Petitioner seeks discretionary jurisdiction of this Court because the district court's opinion below misapplies and directly conflicts with Florida precedent. Furthermore, the district court's opinion expressly, but erroneously, construed the NCAA's federal constitutional rights in its application of Florida's Public Records Act to the NCAA.

The NCAA filed its Emergency Motion for Stay Pending Appeal before this Court on October 14, 2009, seeking a stay of the trial court's order mandating the NCAA's release of private and confidential records pending final ruling of this Court. On October 27, 2009, Petitioner's Emergency Motion for Stay Pending Appeal was denied by this Court. On the same day, the NCAA turned over a copy of the records at issue to the Respondents.

## **II. STANDARD FOR ASSESSMENT OF ATTORNEYS' FEES**

Florida Rule of Appellate Procedure 9.400(b) states a "motion for attorneys' fees... shall state the grounds on which recovery is sought." Respondents seek attorneys' fees under Section 119.12, Florida Statutes, which permits the trial court to assess reasonable costs of enforcement against the responsible agency (including reasonable attorneys' fees) if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied.

### **III. ARGUMENT**

The Respondents incorrectly assert in their Motion for Attorneys' Fees that this appeal involves an action to enforce Chapter 119, Florida Statutes. As stated above, this is not an appeal to enforce Chapter 119, Florida Statutes, but rather an appeal to this Court seeking discretionary jurisdiction. The Respondents have twice received copies of the records at issue.<sup>1</sup> Thus there is no longer a need for the Respondents to seek assistance from any court to obtain the records they now possess.

Chapter 119.12, Florida Statutes (2009), does not give Respondents an absolute right to the assessment of attorneys' fees against the NCAA. In *The New York Times Company v. P.H.H. Mental Health Services*, 616 So.2d 27 (Fla. 1993), this Court held that a private entity acting on behalf of a public agency is not responsible for attorneys' fees and the entity's denial of the request does not constitute an "unlawful refusal" when that entity reasonably and in good faith denies a Chapter 119 request to inspect records because the private entity's status as an "agency" under the meaning of Chapter 119 is unclear. If this Court accepts jurisdiction, it will be abundantly clear how the NCAA's status as an "agency" for purposes of the attorney fee analysis is fictional. The NCAA is a private, voluntary association that regulates intercollegiate athletics among its more than

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<sup>1</sup> FSU released a copy of the same records to the Respondents on October 27, 2009.

1200 member institutions nationwide, including FSU. The trial court is the correct forum to determine whether fees are appropriate given the record before it.

For the reasons stated above, the NCAA respectfully requests this Court enter an order denying Respondents' motion.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was furnished by U.S. mail to Gregg D. Thomas, Esquire, Carol Jean LoCicero, Esquire, Rachel E. Fugate, Esquire, Thomas, LoCicero & Bralow PL, P.O. Box 2602, Tampa, FL 33602, George Freeman, Esquire, The New York Times Company, 620 Eighth Avenue, New York, NY 10018, Michael J. Glazer, Esquire, Ausley & McMullen, P.O. Box 391, Tallahassee, FL 32302, George Gabel, Esquire, Holland & Knight LLP, 50 North Laura Street, Suite 3900, Jacksonville, FL 32202, David S. Bralow, Esquire, 220 E. 42<sup>nd</sup> Street, Suite 400, New York, NY 10012, representing Respondents The Associated Press, Cape Publications, Inc., Collier County Publishing LLC, First Amendment Foundation, Florida Press Association, Lakeland Ledger Publishing Corporation, Media General Operations, Inc., Miami Herald Media Company, Morris Publishing Group LLC, News-Journal Corporation, NYT Management Services Inc., Orlando Sentinel Communications Company, Multimedia Holdings Corporation, Scripps Howard Broadcasting Company, Scripps Treasure Coast Publishing LLC, Sun-Sentinel, Inc., Tampa Bay

Television, Inc., Federated Publications, Inc., WJXX, Gannett River States Publishing Corporation, and WTSP; William E. Williams, Esquire, GrayRobinson, PA, P.O. Box 11189, Tallahassee, FL 32302-3189, Betty Steffens, Florida State University, 211 Westcott Building, Tallahassee, FL 32306-1470, representing Respondents Florida State University Board of Trustees and T.K. Wetherell, and Peter Antonacci, Esquire, GrayRobinson, PA, P.O. Box 11189, Tallahassee, FL 32302-3189, representing Respondent GrayRobinson, P.A., this \_\_\_\_\_ day of December, 2009.

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing brief has been typed using the Times New Roman 14-point font, and therefore complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2), and that the foregoing has been filed pursuant to the requirements of this Court's October 14, 2009 High Profile Case Order.

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