

2009 SEP 18 PM 3:34

FIRST DISTRICT

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

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

Appellant,

vs.

Case No.: 1D09-4385

THE ASSOCIATED PRESS, et al.,

L.T. No.: 09-CA-2298

Appellees.

_____ /

MOTION FOR ATTORNEYS' FEES

Pursuant to Section 119.12, Florida Statutes (2008), and Rule of Appellate Procedure 9.400, Appellees the Associated Press, et al., hereby move for an award of appellate attorneys' fees (and costs) to Appellees from Appellant National Collegiate Athletic Association ("NCAA") and, should it participate in the appeal, Appellant The Florida State University ("FSU"). As grounds for this motion, Appellees state:

1. Section 119.12, Florida Statutes, provides:

If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

2. This appeal involves an action to enforce Chapter 119, Florida Statutes. Both the NCAA and FSU unlawfully refused to permit the public records at issue to be inspected and copied. When an "agency" has "unlawfully refused" to produce requested records, an award of fees is mandatory under the language of Section 119.12.

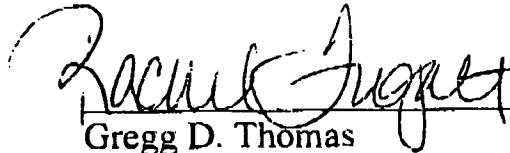
3. "The intent of [Section 119.12] is to reimburse a party who incurs legal expenses when seeking permission to view records wrongfully withheld, even if access is denied based on a good faith but mistaken belief that the documents are exempt." Times Publ'g Co. v. City of St. Petersburg, 558 So. 2d 487, 495 (Fla. 2d DCA 1990). Appellees are entitled to an award of reasonable attorneys' fees (and costs).

4. Under controlling law, Appellees are entitled to an award of their fees (and costs) in this appeal.

WHEREFORE, Appellees respectfully request that this Court grant this motion and enter a judgment for Appellees, taxing attorneys' fees (and costs).

Respectfully submitted,

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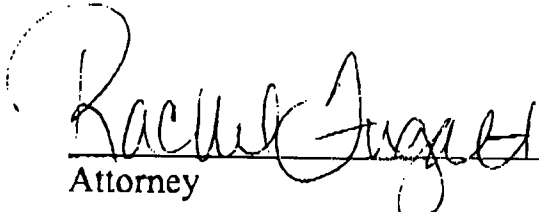
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail and Electronic Mail to **William E. Williams, Esq.**, GrayRobinson, P.A., Post Office Box 11189, Tallahassee, FL 32302; **Peter Antonacci, Esq.**, GrayRobinson, P.A., 301 S. Bronough Street, Suite 600, Tallahassee, FL 32301; **E. Thom Rumberger, Esq.**, and **Leonard J. Dietzen, Esq.**, Rumberger, Kirk & Caldwell, 215 South Monroe Street, Suite 130 Post Office Box 10507, Tallahassee, FL 32302; **Jonathan F. Duncan, Esq.**, and **Linda Salfrink, Esq.**, Spencer Fane Britt & Browne LLP, 1000 Walnut, Ste. 1400, Kansas City, MO 64106; and **Kent J. Perez, Esq.**, and **Alexis Lambert, Esq.**,

Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050

on this 18 day of September, 2009.



Attorney