

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, STATE OF FLORIDA

CASE NO. 08 CA 11315
DIVISION: B

MARY LOU SMITH, an individual, and
SHARON DENSON, an individual,

Plaintiffs,

vs.

TRAILER ESTATES PARK AND RECREATION
DISTRICT, an independent special
taxing district, JANET JONES, an
individual, JOHN VANDER MOLEN, an
individual, JOSEPH SALERNO, an
individual, and MARY LOU MCNULTY, an
individual,

Defendants.

-----/
DEPOSITION OF: MARTHA BRAUER,
TRAILER ESTATES PARK AND RECREATION
DISTRICT REPRESENTATIVE

(Volume II)

DATE: Friday, August 28, 2009

TIME: 9:49 a.m. - 5:03 p.m.

LOCATION: Kirk, Pinkerton, P.A.
1301 Sixth Avenue West
Suite 401
Bradenton, Florida 34205

REPORTED BY: NANCY E. PAULSEN, CRR, RPR, FPR
Notary Public
State of Florida at Large
US Legal Support
4350 West Cypress Street, Suite 701

U.S. Legal Support
(813) 876-4722

1 **Q. Who is it -- who created the document?**

2 THE DEPONENT: Am I allowed to tell him that?

3 MR. SHULTS: No, that's work product. We
4 claim work product.

5 MR. HENNESSY: How would we be able to
6 determine if the work product applied? I'm not
7 asking for the content of the document, I'm asking
8 for its origin.

9 MR. SHULTS: All right, well, if you want, I
10 can take a break and talk to Martha about it,
11 because I'm not really sure --

12 MR. HENNESSY: Okay.

13 MR. SHULTS: -- of the definitions being used
14 here thus far. So perhaps that would be a good
15 idea.

16 MR. HENNESSY: All right. Why don't we take a
17 five-minute break.

18 (Recess taken from 10:50 a.m. to 11:03 a.m.)

19 MR. HENNESSY: Okay, back on the record.

20 BY MR. HENNESSY:

21 **Q. Before we took our break, Ms. Brauer, I had**
22 **asked you who was the author of the document that was**
23 **being withheld under a claim of attorney/client or**
24 **work-product privilege?**

25 MR. SHULTS: And we've had a -- I've had an

1 opportunity to define what document we're speaking
2 about, and they are trustee comments requested by
3 Mr. Barnebey to the allegations of the complaint.
4 That would be both attorney/client and work
5 product.

6 BY MR. HENNESSY:

7 **Q. Do you know the date on any of those**
8 **documents?**

9 A. No, I do not.

10 **Q. But so that I understand it correctly, your**
11 **attorney correctly, the documents are -- were created**
12 **after the District's receipt of the complaint in this**
13 **lawsuit?**

14 A. Yes.

15 **Q. Okay. And those are the only documents you**
16 **are aware of that are being withheld as work product by**
17 **the District?**

18 MR. SHULTS: There are -- there are also a --
19 there are some documents that have been withheld as
20 both work product and attorney/client
21 communications.

22 MR. HENNESSY: Have you prepared a privilege
23 log with regard to that?

24 MR. SHULTS: No.

25 MR. HENNESSY: Can we get such a privilege log

1 from you?

2 MR. SHULTS: I don't think a privilege log is
3 required in response to the type of discovery that
4 you had served. In other words, this document that
5 you have marked as an exhibit --

6 MR. HENNESSY: (Nods head affirmatively.)

7 MR. SHULTS: -- I don't believe requires the
8 preparation of a privilege log in order to exclude
9 documents from the realm. If it -- if it does, a
10 privilege log will be prepared.

11 BY MR. HENNESSY:

12 **Q. Okay. Are there any documents that are being**
13 **withheld based on claims that they are exempt under the**
14 **Public Records Law from disclosure?**

15 A. Could I ask him to answer that?

16 MR. SHULTS: Well.

17 BY MR. HENNESSY:

18 **Q. No, you can --**

19 MR. SHULTS: I can tell you the Shade
20 transcript is being declared exempt, and we all
21 know that.

22 MR. HENNESSY: There are several Shade
23 transcripts, I suppose, at this point.

24 MR. SHULTS: Correct. Although I'm only --
25 aware of only one transcript that's disputed.

1 MR. HENNESSY: Okay.

2 BY MR. HENNESSY:

3 Q. That's all that you or your attorney are aware
4 of, I guess, being withheld under a claim of exemption?

5 A. Yes.

6 Q. Okay. Have you produced draft or adopted
7 policies related to the District's public requests? No,
8 public -- I'm sorry, let me start again.

9 Have you produced documents in response to
10 request number 10?

11 A. I believe that either in my box or in TJ box
12 -- TJ's box or in the six or seven letters that I
13 reviewed that you had sent to our office regarding
14 public records requests, I believe that it's been given.

15 Q. Okay. So you have also restricted what you're
16 producing today based on what you believe the District
17 has provided in response to prior public records
18 requests?

19 A. Yes. Did I misinterpret that?

20 Q. Well, there is a distinction between the
21 public records requests and the discovery requests in
22 the litigation, but I understand, just so I understand
23 what you've done.

24 MR. SHULTS: The -- and it is basically at --
25 at -- it's based on my understanding of what we

1 MR. HENNESSY: Okay, back on the record.

2 BY MR. HENNESSY:

3 Q. Ms. Brauer, as I understand your testimony,
4 you believe that there were two separate projects that
5 you were working on, one was your personal project and
6 one was then later with the Policy and Procedure
7 Committee?

8 A. Yes.

9 Q. Okay. And how did the Policy and Procedure
10 Committee's tasks differ from the task you were
11 performing in your review of District documents and
12 development of a District handbook?

13 MR. SHULTS: Object to form.

14 A. The project that I was working on was to
15 compile policies that had been passed in the past but
16 hadn't been given a name or a number. The committee's
17 work was to write, develop, and revise policies.

18 BY MR. HENNESSY:

19 Q. Did there come a time when those two tasks
20 merged into one?

21 A. No.

22 Q. Okay. And as I understand it, your project of
23 compiling past policies and give them names and numbers
24 if they didn't have one, that was a project that
25 preceded the existence of the Policy and Procedure

1 **Committee?**

2 A. No, did not.

3 **Q. Oh. Okay. It just preceded your**
4 **participation on the Policy and Procedure Committee?**

5 MR. SHULTS: Object to form.

6 A. I believe the Policy and Procedure Committee
7 arose out of my work. I started on my project. It
8 informed the Board in a sense -- it took a full year to
9 make it.

10 BY MR. HENNESSY:

11 **Q. Right.**

12 A. Okay. I believe the -- as I was working on my
13 project, there was some comment amongst the board
14 members at board meetings and amongst the public, and,
15 therefore, a Policy and Procedure Committee got named,
16 and -- with a task of, as I just said, developing,
17 revising, working with the board on policies.

18 Mine was to take everything they've done in
19 the past and compile it, catalog it, table of contents
20 it, and set up a structure for what the Policy and
21 Procedure Committee would be doing.

22 **Q. Okay. Where did you do all this compiling for**
23 **your project?**

24 A. In my head.

25 **Q. Okay. Well, where was your head physically**

1 **when you were doing this work?**

2 A. In the back -- back -- most of the time in the
3 back part of the office where they review public
4 records.

5 **Q. The District offices?**

6 A. Um-hum (affirmative).

7 **Q. I'm sorry?**

8 A. The District office, yes.

9 **Q. And who provided you with the documents that**
10 **you reviewed?**

11 A. Each Friday, I would come in and TJ would give
12 me the minutes notebook, and I would read and read and
13 read and read.

14 I will clarify, not all my -- not all of my
15 work -- once all the reading was done, then I moved into
16 either the computer on -- in the treasurer's and
17 secretary's office or the extra computer in the main
18 District office to then compile and put headers and
19 footers on forms that the District was using, you know,
20 the header and the footer for when it was adopted,
21 giving it a policy number, the -- the mechanical part of
22 putting the book together.

23 **Q. Okay. So originally, you started out in the**
24 **back room where people review public records, and then**
25 **you moved to an office working on one of the District**

1 **computers?**

2 A. Yes.

3 **Q. All right. Was there anyone who assisted you**
4 **in this task?**

5 A. Mostly TJ, because of the -- I would read
6 about a particular type of document or a policy that had
7 passed, and I would say to TJ -- I would actually, on a
8 Friday, tell her what I needed for the next Friday.

9 **Q. Okay.**

10 A. And then she might give me a copy of the
11 marina lease, she might give me a copy of the TV
12 contract, whatever it was that I had been reading about
13 in the minutes that I thought that I would need for the
14 next time that I came.

15 **Q. Were these requests for documents by you made**
16 **in writing?**

17 A. No, they were not.

18 **Q. Okay. Were they just verbal requests to TJ?**

19 A. Just -- yes.

20 **Q. And was there anybody supervising your**
21 **activity?**

22 A. Janet Jones. The project was under her
23 auspices.

24 **Q. So Janet Jones would be present when you were**
25 **reviewing the documents?**

1 A. No, she wasn't present.

2 Q. Was TJ present while you were reviewing the
3 documents?

4 A. No, she was not. She made copies for me.

5 Q. Okay.

6 A. I actually had copies of all the minutes so
7 that I would not be using the -- you know, they would be
8 available for others, I guess.

9 Q. Okay. So you have a -- your own set of all
10 the historic minutes of the District?

11 A. I wouldn't say all, but.

12 Q. From what period of time?

13 A. I believe 2001 through much of 2007.

14 Q. That must have cost you a little bit of money
15 to pay for all those minutes.

16 A. Is that a question?

17 Q. Yeah.

18 A. I did not purchase them.

19 Q. Okay.

20 A. They are working papers that the District
21 provided me for completion of the project.

22 Q. Okay. Were there any documents that you were
23 told you could not look at while you were doing your
24 project?

25 A. I did not have access to certain things. I

1 didn't have access to the file cabinets or anything. I
2 would ask TJ for a lease or a form, and then she would
3 give it to me so that I could determine where it fit in
4 the book. And then when I was on the computer, I had
5 access to the Word documents file where all of these
6 forms exist.

7 Q. But did you ever request a document that you
8 were told you could not have?

9 A. No, I didn't request anything.

10 Q. Now, you indicated that there were minutes
11 that included statements by Mr. Barnebey about the
12 Administrative Committee?

13 A. Yes.

14 Q. And those were minutes that you reviewed as
15 part of your project?

16 A. Yes.

17 Q. And you reviewed these documents, you said,
18 in, what, sometime in 2007?

19 A. Yes.

20 Q. Do you recall when the minutes were from that
21 you reviewed?

22 A. That have the statement that Mark Barnebey
23 said?

24 Q. Yes.

25 A. Okay. I believe it was late 2006, but I can't

1 litigation has begun?

2 A. No, I don't believe I have.

3 Q. Are you aware of any District records being
4 destroyed since the litigation began?

5 A. No, I am not aware.

6 Q. Okay. We asked you about training on the
7 Sunshine Law. Have you had any specific training with
8 regard to the Public Records Law?

9 A. I believe part of that workshop that -- I
10 can't say for sure, but I believe part of that workshop
11 was also on public records that --

12 Q. The workshop in 2009 put on by Mr. Barnebey's
13 firm?

14 A. Yes. I believe so. I could be mistaken,
15 though.

16 Q. Would your only public records training, then,
17 to your knowledge, be related to the presentations you
18 attended or observed put on by the Kirk Pinkerton law
19 firm?

20 MR. CARROLL: Form.

21 A. That and the reading of the manual, the
22 Government-in-the-Sunshine Manual.

23 One other thing. I did review the manual that
24 TJ brought back from her seminar.

25 BY MR. HENNESSY:

1 Q. Well, to your knowledge, have prior clubs
2 utilized the tax exemption offered to the District in
3 the past?

4 A. You know, I'm not -- not aware.

5 Q. The -- your denial of the request of a club --
6 which club was that?

7 A. It was the yacht club.

8 Q. Your denial of that request, was that made at
9 a board meeting?

10 A. No, it was not.

11 Q. Was it put to a board vote?

12 A. No.

13 Q. And when did it occur?

14 A. On a Friday, April, May-ish.

15 Q. Do you have a home computer?

16 A. Yes.

17 Q. Is it a laptop or a PC?

18 A. Laptop.

19 Q. Do you use it for District business?

20 A. On occasion.

21 Q. With regard to the information on that
22 computer that you've used -- start again.

23 With regard to the information on that
24 computer that concerns District business, how do you
25 maintain that information?

1 A. There is a folder on the desktop that I put
2 website information when it comes to me over the e-mail.
3 It says "TE stuff".

4 **Q. Okay. Do you ever forward that information to**
5 **the District office for maintenance as a public record?**

6 A. When I get an e-mail regarding something
7 uploading on the website, it comes from the District
8 office.

9 **Q. Do you upload on the District website from**
10 **your home computer?**

11 A. On occasion, yes.

12 **Q. What about documents that you generate related**
13 **to District business, do you transfer that to the**
14 **District ever?**

15 A. I either print them out, and -- if I'm mailing
16 them, I print them out, mail them, and then make a copy
17 for the District office, which reminds me, there is one
18 I just left out that I need to turn in, when I'm up
19 north.

20 My work down here I do at the District office.

21 **Q. Other than the document you've printed out and**
22 **that you haven't yet delivered to the District office,**
23 **are there any other documents or information on your**
24 **computer related to District business that you have not**
25 **provided to the District?**

1 A. Let's see. In that "TE stuff" folder, I am
2 working on changing the policy manual into a web format.
3 And so the District has the policy manual already, but I
4 do have a file that I'm saving where I'm trying to turn
5 it in where people could actually see it on the website.
6 Not a PDF file, a different kind of file.

7 I do have a project that I'm working on right
8 now that I haven't turned in yet, and -- because I'm not
9 quite finished, and that's this compilation of all the
10 videos, I'm actually making a -- in the process of
11 reverifying the data, which videos we were able to copy
12 from the Video Club, which audiotapes of ours we were
13 able to turn into CD's, etcetera, so that in the end,
14 the office will have an accurate chart of the materials
15 that we have in the office.

16 That should be ready within the next week or
17 so.

18 **Q. You were in attendance for the deposition of**
19 **my client, Mary Lou Smith, yesterday?**

20 A. Yes.

21 **Q. And during that deposition, she indicated**
22 **documents that she has requested from the District that**
23 **she has not yet received? Do you recall that?**

24 A. Yes.

25 **Q. Particularly, she recalled -- discussed two**