

**December 15, 2006**

## **Jimenez to chair Attorney-Client Privilege Task Force**

Threatened and endangered species are nothing new to Floridians. Manatees, panthers, and Lower Keys marsh rabbits have all been slipping away at alarming rates, environmentalists warn.

But who's looking out for the endangered attorney-client privilege? A brand new Florida Bar group called the Attorney-Client Privilege Task Force.

"It's happened all over the country, including in Florida, so there's a concern here that we need to follow the ABA's lead and establish a task force to deal with the protection and preservation of the attorney-client privilege," said Marcos D. Jimenez, chair of the task force, which is expected to work on the issue for the next 18 months.

Starting in about 1999 and continuing through the present, Jimenez said the Justice Department began to issue memos through the deputy-attorneys general offices. The Justice Department stated that one of the factors that prosecutors should consider in determining whether a corporation has been cooperative — and is therefore deserving of the benefit of cooperation — is whether or not the corporation waived the privilege. After those memoranda were issued and demands by prosecutors around the country increased, corporations and their lawyers began to become very concerned, said Jimenez, the former U.S. attorney for the Southern District of Florida who now practices with Kenny, Nachwalter, P.A. in Miami.

"There's a consensus in the corporate world that the Justice Department is encouraging a culture of waiver of the privilege and thereby eroding it," Jimenez said.

The Bar Task Force on the Attorney-Client Privilege, created by the Board of Governors at the urging of Bar President Hank Coxe, is charged with making recommendations concerning the compelled or coerced waiver of the attorney-client privilege. It also will examine the purpose behind the attorney-client privilege and its exceptions; the circumstances in which competing objectives are currently being asserted by government agencies and others to override the privilege; and the extent to which the correct balance is being struck between the competing objectives.

"We're going to study what's been done previously by the ABA and other bar associations, have our committee members investigate it for

the task force, identify the issues we think we need to tackle, and then take some steps to follow up," Jimenez said.

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"The ACP is one of the bedrock principles of our justice system," he said. "Clients need to feel comfortable that their communications and their discussions with their lawyers are in confidence and aren't going to be shared with third parties without their consent. Anything that erodes or attacks that principle is a very serious matter."

The other members of the task force include:

- Adele I. Stone, vice chair, Atkinson Diner Stone Mankuta & Ploucha in Ft. Lauderdale.
- Professor Anthony V. Alfieri, University of Miami School of Law.
- Hilarie Bass, ABA liaison, Greenberg Traurig in Miami.
- Robert Beatty, Miami Herald Publishing Company.
- Dana Gibson Bradford II, Smith Gambrell Russell in Jacksonville.
- Steven E. Chaykin, Akerman Senterfitt in Miami who also sits on the Board of Governors.
- Professor Timothy P. Chinaris, Jones School of Law, Montgomery, AL.
- Ian M. Comisky, Blank Rome in Philadelphia, who also is a member of the Board of Governors.
- Professor Charles Winton Ehrhardt, Florida State University School of Law, Tallahassee.
- Ellen M. Fitzsimmons, CSX Corporation in Jacksonville.
- Professor Roberta Kemp Flowers, Stetson University School of Law, St. Petersburg.
- Jesus A. Gonzalez-Pita, Tyson Foods, Inc., in Springdale, AR.
- Robert Stephen Griscti of Robert S. Griscti, P.A., in Gainesville.
- William F. Jung of Jung and Sisco in Tampa.
- Katherine Claire Lake of Fowler White Boggs Banker in Tampa.
- Roberto Martinez of Colson Hicks Eidson in Coral Gables.
- Paul Ignatius Perez, Department of Justice, Jacksonville.
- Professor Michael S. Seigel, University of Florida Levin College of Law, Gainesville.

- Bruce Lee Udolf, Berger Singerman, Ft. Lauderdale.
- Sylvia H. Walbolt, Carlton Fields, Tampa.

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