
SUSSEX COMMONS ASSOCIATES, LLC
and HOWARD BUERKLE

Plaintiffs,

v.

RUTGERS, THE STATE UNIVERSITY,
RUTGERS ENVIRONMENTAL LAW
CLINIC, AND RUTGERS UNIVERSITY
CUSTODIAN OF RECORDS,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

Docket No: MID-L-8465-06

Civil Action

BRIEF OF AMICI CURIAE CITIZENS FOR RESPONSIBLE DEVELOPMENT AT ROSS'
CORNER, COALITION TO PROTECT OUR LAND, LAKES AND WATERSHEDS, AND
WEISSMAN AND MINTZ, LLC

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PRELIMINARY STATEMENT

Citizens for Responsible Development at Ross' Corner, Coalition to Protect Our Land Lakes and Watersheds, and Weissman and Mintz, LLC (hereinafter, "Amici"), submit this brief *amici curiae* for the purposes of bringing to the Court's attention important legal issues that have not yet been considered by the Court or the parties in connection with plaintiffs' improper attempts to use the Open Public Records Act and the common law right to access public records to gain access to Amici's client files in the possession of the Rutgers Environmental Law Clinic ("Clinic"). Plaintiffs Sussex Commons Associates and Howard Buerkle ("Developer") have been doing battle in Frankford Township, New Jersey, for over five years to develop an outlet mall on a prime piece of property commonly referred to as Ross' Corner. Amici have, in a number of different capacities, been on the other side of this fracas for many years.

The Developer's requests under the Open Public Records Act ("OPRA") and the common law are nothing more than thinly veiled attempts to stifle opposition to the outlet mall project, to chill public participation, and to gain access to confidential and privileged information belonging to private parties. Not only are the Developer's requested documents well outside the reach of both OPRA and the common law, the prime target—the Rutgers Environmental Law Clinic—is obligated to protect the requested information. Private parties represented by Clinic attorneys are entitled to all of the same protections, safeguards, and ethical considerations as private clients represented by purely private attorneys. To grant the Developer's requests in this instance would pervert the very purposes of OPRA and the common law public records access, prevent legal clinics from providing fully effective legal assistance to private clients in need,¹ violate both the clients' and attorneys' reasonable expectations of privacy and confidentiality, reduce private

¹ Please see the amicus curiae briefs filed on behalf of the Rutgers Newark Clinical Program and the Clinical Legal

parties receiving legal assistance from law clinics to second-class citizens, and would further discourage the private bar from volunteering to assist law clinics.

STATEMENT OF AMICI

The Coalition to Protect Our Land, Lakes and Watersheds ("Coalition") is an organization composed of community groups and individual citizens from northwest New Jersey committed to preserving and protecting the lands and watersheds that surround and feed the Paulinskill, Lake Owassa and Culver, Kemah, Ann, Clearview and Crandon Lakes so that the lakes, brooks and streams remain pure and unpolluted. Certification of Julia LeMense Huff, dated October 16, 2006 (attached to Defs.' Opp'n to Order to Show Cause) at ¶ 10 ("Huff Cert.").

Citizens for Responsible Development at Ross' Corner ("Citizens") is a New Jersey non-profit corporation with three officers, no membership or membership dues, funded by voluntary contributions. Its mission is to promote responsible development at Ross' Corner and, in so doing, oppose plaintiffs' proposed outlet mall. Huff Cert. at ¶ 19.

Weissman and Mintz, LLC, is a law firm with offices in Somerset, New Jersey and New York, New York. Webster Cert. at ¶ 2. David Mintz and his partner, Steven Weissman, provided volunteer legal assistance to the Rutgers Environmental Law Clinic. Id. Weissman and Mintz is addressing plaintiffs' contention that its communications to the Clinic, made as volunteer attorneys, are subject to the Open Public Records Act and/or common law public records requests. Id.

The Coalition and Citizens are addressing plaintiffs' contention that the files of the Coalition and Citizens, some of which are currently maintained at the Clinic, are subject to Open Public Records Act or common law public records requests. Certification of Richard Webster,

Education Association for a full discussion of these important considerations.

dated May 2, 2008, at ¶¶ 2, 3. Weissman and Mintz, LLC, is addressing plaintiffs' contention that the materials of David Mintz, an attorney providing volunteer legal assistance to the Clinic, are subject to OPRA or common law public records requests. Id. at ¶ 2. All Amici are deeply concerned that client confidences and privileged information, as well as information that may not fall squarely within any privilege but yet was never intended to be "public," will be improperly and inappropriately disclosed and disseminated by defendants. Id. at ¶¶ 2, 3.

ARGUMENT

The majority of the files the Developer seeks are housed in the client files at the Clinic. These files contain communications made by private clients or volunteer lawyers to Clinic attorneys. The Coalition and Citizens approached the Clinic, in the first instance, out of concern for the quality of life in and character of the Township of Frankford. Huff Cert. ¶¶ 10, 19. That Amici have been at odds with the Developer and its plans for Frankford Township is well known, and described is in the Certification of Julia LeMense Huff attached to defendants' opposition to the Order to Show Cause. To grant the Developer's Order to Show Cause and require the Clinic to release the requested confidential files flies in the face of the purposes and OPRA and the common law. Moreover, such a decision would fundamentally alter, after the fact, the original relationships established between the lawyers in the Clinic and Amici in a manner that would do violence to Clinic lawyers' ethical obligations "to serve the undivided interests of [their] clients." Polk County v. Dodson, 454 U.S. 312, 319 (1981).

The Developer's reliance on OPRA and the common right to access public records as part of its efforts to obtain private information is untenable. Principally, the files in the possession of the Clinic, the subject of plaintiffs' records requests, are *client files* and *cannot* be lawfully obtained in the manner plaintiffs' request. Secondly, client files in the possession of attorneys at

the Clinic are *not* subject to records requests because they are neither public records nor government records. Thirdly, the Clinic, as a provider of pro bono legal services to private environmental, conservation and community groups, is *not* subject to public records and government records requests because its attorneys are *not* state officials and do *not* act under color of state law. Lastly, even if the Court were to find that the Clinic is obligated to respond to plaintiffs' demands, the requested documents are protected by attorney-client, work product, and common interest privileges, and/or are confidential.

1. The Requested Documents Are Private Client Files

Fundamental to the practice of law is a lawyer's duty of loyalty to her client. In re Educ. Law Ctr., Inc., 86 N.J. 124, 133 (1981); In re Dolan, 76 N.J. 1, 9 (1978). "The attorney-client relationship embodies the concept of the client's trust in his [or her] fiduciary, the attorney." In re Loring, 73 N.J. 282, 289 (1977). While it is the case that all fiduciaries have "a duty of fairness, good faith and fidelity," attorneys are held to a higher standard than other fiduciaries. In re Honig, 10 N.J. 74, 78 (1952). In Loring, the Court noted that few [obligations are] more anxiously guarded by the law, or governed by sterner principles of morality and justice," than that of the attorney's obligations to her clients. Loring, 73 N.J. at 289 (quoting Stockton v. Ford, 52 U.S. (11 How.) 232 (1850)); see also R.P.C. 1.7 (prohibiting conflicts of interests involving concurrent clients); R.P.C. 1.8 (prohibiting specified lawyer-client conflicts).

In addition to the duty of loyalty, the Rules of Professional Conduct affirmatively obligate an attorney to "act in, and to look out for, a client's best interests." Estate of Spencer v. Gavin, __ N.J. Super. __ (App. Div. 2008), 2008 WL 1848101 at *10 (2008). An attorney continues to have obligations to its clients even after the representation ceases or terminates – for example avoiding conflicts of interests or revealing client confidences. R.P.C. 1.6 and 1.9. In

essence, the attorney takes only those actions that are in the best interest of the client. Gavin, 2008 WL 1848101 at *10.

The primacy of the client in this relationship is further evidenced by the requirements that lawyers consult with, and be guided by, the decisions of the client regarding representation. R.P.C. 1.2. Principal to a lawyer's relationship with her client is her obligation to serve the client. The lawyer is required to keep client property safe and separate from her own and from the property of others. R.P.C. 1.15. Upon termination of the relationship, the lawyer must return papers and property to the client. R.P.C. 1.16(d). Furthermore, a lawyer may only sell his practice if he provides notice to the client that he has the right to hire another lawyer, and that the client "may take possession of the client's file and property." R.P.C. 1.17. All of the rules governing the relationship between lawyer and client make clear that the file generated by the lawyer is on behalf of and for the benefit of the client and that the client has the right to those materials—*they do not belong to the lawyer.*

In the present case, the Developer is attempting to access materials belonging to private clients that are held by their (now former) lawyer. That the Clinic is housed at Rutgers Law School-Newark, a unit of Rutgers University, does not alter the fundamental fact that the vast majority of the materials requested by the Developer—those belonging to or having anything to do with the representation of Amici by the Clinic—belong to the clients and can be removed from the Clinic at any time. Additionally, OPRA acknowledges the supremacy of other laws demanding privacy, such as the Rules of Professional Conduct and the body of case law discussed above that protects the client and his rights. N.J.S.A. 47:1A-1; 47:1A-9. Because the documents sought by the Developer are *private files* belonging to clients and volunteer attorneys, they are wholly outside the scope and consideration of both OPRA and the common light right to

access public records.

2. The Requested Documents Are Neither Government Records Nor Public Records

The Developer has made requests for Amici's files under both OPRA and the common law right to access public records. Because the requested files relating Amici are neither government records nor public records, the requests should be denied.

Government records are defined as those "made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision." Id. 47:1A-1.1. Thus, if the public employee or public entity has not made, maintained, kept or received a document in the course of his or its official business, a document is not a "government record" subject to production. See Michelson v. Wyatt, 379 N.J. Super. 611 (App. Div. 2005); The Daily Journal v. Police Dep't of Vineland, 351 N.J. Super. 110, 120 (App. Div. 2002) (pursuant to Right to Know Law, a document prepared by a public employee is a public record only if its preparation was required by law or regulation), certif. denied, 174 N.J. 364 (2002). Moreover, the public agency or entity is not required to produce a document if the public employee or public agency is not required by law to maintain such information. Bd. of Educ. of Newark v. N.J. Dep't of Treasury, 145 N.J. 269, 279 (1996).

Similarly, but distinctly, a public record is a record made by a *public* official in the exercise of her *public* function. These records are considered to be "public" as the law requires the official to make or keep the record, or because the records were filed in a public office. Keddie v. Rutgers, 148 N.J. 36, 49 (1997).

Clinic lawyers representing private clients are not public officials and their offices are not public offices. See In re Determination of Executive Commission on Ethical Standards re: Appearance of Rutgers Attorneys, 116 N.J. 216, 228 (1989); see also Dodson, 454 U.S. at 318-

19. As with all other attorney-client relationships, the documents in the client file belong to the client. Moreover, Clinic lawyers are not legally required to create the documents and client materials are not “filed” in a public office—they are maintained in trust for the benefit of the client. Additionally, the clients are not obligated to provide any written communication or materials to the Clinic lawyers.

Finally, fundamental principles of academic freedom militate against construing Clinic lawyers as public officials and their clients’ files as public or governmental records. The Supreme Court discussed this freedom in the case of In re Determination of Executive Commission on Ethical Standards re: Appearance of Rutgers Attorneys, 116 N.J. at 224. In its examination, it restated the idea that Rutgers University has a great deal of independence and is a “guilds of scholars...responsible only to themselves.” Id. (citing Snitow v. Rutgers University, 103 N.J. 116, 122 (1986)). The Court “recognized the fundamental importance of academic freedom in our society,” and stated that:

The concept of “[a]cademic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment.” Regents of the University of California v. Bakke, 438 U.S. 265, 312 (1978) (Powell, J., announcing Court’s judgment and expressing his views of case). “[T]he four essential freedoms’ of a university” have been said to include the freedom “to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.” Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring) (citation omitted).

To characterize one of these scholars, for all purposes, as the equivalent of a “State employee” is to misperceive history and to traduce legislative purpose.

Id. Similarly, in the present case, Clinic attorneys with complete control and freedom over what cases they take—a selection based on a determination of what they teach and how they teach it—

are not *public officials* or *State employees* acting in any official capacity on behalf of Rutgers University. The files the Clinic lawyers maintained in the course of representing private clients, therefore, cannot properly be construed as government records or public records. Consequently, the Developer has no basis upon which to demand these files.

It should be noted, there is no law that requires Rutgers University to make or keep these files. In Keddie v. Rutgers, the Court held that, because the requested billing documents and legal submissions sought by the requestor were not explicitly required to be made or kept by Rutgers, they were not government records for purposes of the Right to Know Law (the predecessor statute to OPRA). Keddie, 148 N.J. at 40² Other examples of records that New Jersey courts have held to be outside of OPRA because they were not required by law to be made include: a township board of education secretary's handwritten notes and materials, O'Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534, 538-39 (App.Div. 2007); audiotapes of meetings of the Atlantic City Convention Center Authority, Atlantic City Convention Center Auth. v. South Jersey Publishing Co., 135 N.J. 53, 63-64 (1994); and working drafts of budget documents, Home News v. Bd. of Educ. of Spotswood, 286 N.J. Super. 380, 387-89 (App.Div.1996).

The analysis under the common law is slightly different, but here the outcome is unaltered. As discussed in the preceding paragraphs, Clinic lawyers are not required by any law to make any records. They are not public officials and their offices are not public, and thus the records are *not public*.

Even assuming *arguendo* that the requested items are public records, the common law requires that the requester establish: (1) an interest in the subject matter of the documents, and

² The Right to Know Law was the predecessor to OPRA. The Legislature enacted OPRA in 2001 and it came into effect in 2002. Although the provision cited in Keddie changed slightly, courts have continued to require that the

(2) the interest in disclosure must outweigh the State's interest in preventing disclosure. Keddie, 148 N.J. at 50. The Developer appears not to have made any showing of its claimed interest in the requested items, as required by the common law. Pls.' Letter Brief dated Sept. 22, 2006. The Developer appears only to state, in a letter dated March 7, 2008 to the Court, that its interest is in "obtaining information about objectors to its land use application." This is not an interest in agency action or the government—this interest relates to private parties. Furthermore, the Frankford Township Land Use Board approved the application in May 2006 and again, after a limited remand hearing, November 2007. As such, there is no pending land use application and there is no objector. The Developer's attempts to use the common law public access to records to invade the privacy of members of the Frankford Township community are wholly inappropriate. Developer's motivations are neither legitimate private interests nor wholesome public interests. Cf. North Jersey Media Group, Inc. v. State of New Jersey, Dept. of Personnel, 389 N.J. Super. 527 (2006). Moreover, the interest of Rutgers in preventing disclosure of client documents in the possession of Clinic lawyers serving in a purely private capacity far outweighs any interest of the Developer, especially one as vacuous as that posited in this case.

3. The Requested Documents Are Otherwise Protected From Disclosure

In the alternative, and assuming *only* for the purposes of argument, that the documents sought are public records or government records, they still cannot be disclosed as they are subject to a myriad of protections and exceptions.

a. *Amici Reasonably Expected the Its Communications to Clinic Lawyers Would Be Confidential*

The Coalition, Citizens and Mintz were not required to communicate or interact with Clinic lawyers. That either asked for, or provided assistance to, the Clinic lawyers with the

record be required by law. See, e.g. Michelson v. Wyatt, 379 N.J. Super. 611, 619 (App. Div. 2005).

understanding that they were interacting not with the State of New Jersey or one of its political subdivisions, but with attorneys handling a *private matter*. Webster Cert. at ¶¶ 2, 3. They had a reasonable expectation of privacy in the communications and exchanges they had with Clinic lawyers that cannot now, after the fact, be defeated or altered. For all of the reasons discussed above, and for the reasons articulated in the briefs filed by the other amicus parties in this matter, to treat the Clinic as simply just another department or agency in the State would run counter to the recognized function the Clinic serves. Furthermore, such designation ignores the similarities the Clinic bears to the public defender—a public office providing legal services to private clients—whose case-related files are simply not government or public records. N.J.S.A. 47:1A-5(k).

b. Coalition and Citizens Documents Are Protected by the Attorney Client Privilege

The attorney-client privilege, arising out of the common law, “is not an idle and anachronistic vestige of the ancient past. On the contrary, it has a well-defined relationship, recognized and defined over the centuries, to the administration of justice, to the basic needs of the human condition, to the essential rights of man and thus to the public interest. As such it clearly deserves the continued protection of the courts.” *In re Kozlov*, 79 N.J. 232, 242-43 (1979). While the privilege is not without its limits, none of those limitations are applicable in this case. *Id.* at 243. The vast majority of the documents requested by the Developer that relate to legal services provided by the Clinic to the Coalition and Citizens fall within the privilege.

c. The Clinic Files Are Protected by the Work Product Privilege

The work-product doctrine was first recognized by the Supreme Court of the United States in *Hickman v. Taylor*, 329 U.S. 495 (1947), and is recognized in New Jersey by Court Rule 4:10-2(c). See *La Porta v. Gloucester Cty. Bd. of Chosen Freeholders*, 340 N.J. Super. 254,

260 (App. Div. 2001). The doctrine “protects from disclosure those documents and other tangible things that a party or a party's representative prepares in anticipation of litigation.” Id. It also “recognizes the need for a lawyer to ‘work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.’” Id. (citing Hickman, 329 at 510-11). Again, invariably many of the documents sought by the Developer from the Clinic’s files fall within this category and accordingly, are protected from disclosure.

d. Day Pitney and Weissman and Mintz Files Are Protected by the Common Interest Privilege

To the extent that the Developer continues to seek access to documents in the Clinic’s files relating to Day Pitney – formerly Pitney Hardin, the attorneys for the Developer’s competitor Chelsea Property Group – and David Mintz of Weissman and Mintz, LLC, these documents are protected by attorney work product and attorney client privileges. Applicable here is the principle of common interest, as Chelsea agrees with Citizens that the Sussex Commons project should not proceed. Further, David Mintz provided volunteer legal assistance to the Clinic at various times throughout the last four years’ myriad of litigation. Communications from David Mintz and from Weissman and Mintz, therefore, are also protected by the common interest privilege. See generally La Porta v. Gloucester Cty Bd of Chosen Freeholders, 340 N.J. Super. 254 (App. Div. 2001)(protecting the communications between parties and/or counsel where persons share a common interest or common purpose in litigation).

Citizens and Chelsea satisfy the La Porta test for determining common interest. Id. at 262-263. Additionally, Mintz and Citizens, as well as its individual directors, satisfy the La Porta test, as they were all named as non-defendant co-conspirators in a proposed amended complaint filed by Sussex Commons Outlets, LLC. The motion for leave to amend the complaint to add these individuals was recognized by Judge Farber as harassment and the motion

was denied. Huff Cert. at ¶¶ 49, 50 and 52. Thus, the communications the Developer seeks relating to Chelsea Property Group, Pitney Hardin, and Mintz are all protected from disclosure under both the common law and OPRA.

e. The Requested Items Fall Within the Higher Education Exception to OPRA

Arguing in the alternative and assuming, again, for the purposes of discussion that the Clinic is a public entity and its lawyers acting in some sort of official capacity, then the Court should not overlook the fact that the official business of the Clinic is to educate students and train them become lawyers by working on actual cases. In light of this goal, virtually all of the materials are excluded from OPRA, because they are kept for pedagogical purposes. N.J.S.A. 47:1A-1.

4. The Developer's Request Is Contrary to the Public Policies Underlying Access to Public Records

The Legislature enacted OPRA to make government records available to the citizens of the State. N.J.S.A. 47:1A-1. OPRA's purposes are to allow citizens access to government records so they may stay informed about the State's activities and to facilitate the public's participation in government. MAG Entertainment, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 544 (App. Div. 2005). "Its purpose is to inform the public about agency action, not necessarily to benefit private litigants." Id. at 545.

As a threshold matter, the Developer is clearly not interested in the State's activities and agency action. The scope and nature of the requests, aimed at communications between attorneys and their clients and volunteer attorneys, reveal that the Developer is primarily mining for materials from private citizens. There is nothing in the client files the Developer seeks that will in any way inform it about agency action. The Developer is simply attempting to gain a tactical edge in the remaining court case involving Citizens, as well as any future actions that

come before the Frankford Township Land Use Board and Committee. In light of the lack of any legitimate interest identified by the Developer, and given the longstanding battles in Frankford Township, one may be drawn to the conclusion that the Developer's interests here are to discourage future citizen participation.

To allow the Developer to use public records access laws to retrieve information from private citizens groups, who sought Clinic lawyers' legal assistance to engage in the public process, would wholly violate the spirit and intent of these laws. The Developer should not be allowed to use "good government" laws to subvert public participation and private clients' rights to be represented by counsel of their choosing. The Clinic has proven itself to be an effective provider of legal services and instructional vehicle. Its ability to perform these vital functions will be adversely affected if the public records access laws in New Jersey are contorted to allow private parties to elevate their interests over the public and to inflict an injustice upon the very people these laws were designed to benefit and protect.

CONCLUSION

The Developer's attempts to access its opponents' confidential information by using OPRA and the common law as a vehicle, is an affront to the attorney-client relationship, and perverts the fundamental reason for the laws' existence. The laws invoked by the Developer were designed to allow the public to have access to files of the *government*. Here, that law is being abused by the Developer who is distorting the character of the Clinic, and attempting to use the relationships between the Clinic and Amici as an excuse to rifle through information that would otherwise be inaccessible to plaintiffs. The Developer has already obtained the information it requested from Rutgers University, a quasi-public entity, that relates to how the University funds the Clinic. That is all to which the Developer is entitled, even under the

broadest and most generous readings of the common law and OPRA. The Clinic is acting in the capacity of a private attorney, providing legal services not to Rutgers or a public entity, but to *private* clients. Further, the Clinic no longer represents the Coalition or Citizens or receives assistance from volunteer attorneys, and as such any alleged right to access this information has since terminated. There could be no greater irony than to allow the Developer, a known and long-standing adversary to Amici, to use laws enacted to foster public participation in government as a means of thwarting the ability of these groups to engage in issues of paramount importance in their communities, and to effectively chill their First Amendment rights. See Brief of Amicus Curiae Clinical Legal Education Association.

For all of the reasons set forth above, Amici respectfully requests that the Court honor the sanctity of the relationship between a private client and its attorneys and deny the Developer's Order to Show Cause.

Respectfully submitted,

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

Docket No: MID-L-8465-06

Civil Action

CERTIFICATION OF RICHARD WEBSTER

I, Richard Webster, of full age, certify as follows:

1. I am a staff attorney and Legal Director of the Eastern Environmental Law Center. I am fully familiar with the facts stated herein and with the attached documents.
2. The document attached as Exhibit 1 is a true and correct copy of a letter from David Mintz, Esq., partner at Weissman and Mintz, LLC and President of the Coalition to Protect Our Land, Lakes and Watersheds, dated March 25, 2008 to the Rutgers Environmental Law Clinic.
3. The document attached as Exhibit 2 is a true and correct copy of a letter from Tom Powers, Chair of Citizens for Responsible Development at Ross' Corner, dated March 25, 2008 to the Rutgers Environmental Law Clinic.

4. I hereby certify that the foregoing statements by me are true. I am aware that if any of the foregoing statements by me are willfully false I am subject to punishment.


RICHARD WEBSTER

DATED: May 2, 2008

EXHIBIT 1

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*ADMITTED TO PRACTICE IN NEW JERSEY ONLY
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123 Washington Street
Newark, New Jersey 07102

Re: Sussex Commons Associates, LLC, *et al.* v.
Rutgers, The State University of New Jersey, *et al.*

Dear Professors Dubin and Gold:

I am writing as a former client of the Rutgers Environmental Law Clinic and as a colleague whose law firm provided *pro bono* legal assistance to the same Clinic on a matter involving Frankford Township and the Citizens for Responsible Development at Ross' Corner. It is my understanding that plaintiff Sussex Commons Associates, via an OPRA request, seeks copies of correspondence and documents from our client files – many of which are protected by the attorney-client and/or attorney work product privileges. In engaging the Rutgers Environmental Law Clinic to represent the Coalition to Protect our Land, Lakes and Watersheds, and in providing volunteer legal assistance to the Clinic in its defense of local officials and private citizens against SLAPP suits brought by Sussex Commons Associates, it was assumed that Rutgers would protect the integrity of its Clinic and the legitimate expectations of its clients and volunteer attorneys with respect to accepted rules of confidentiality and privilege. The Coalition is not currently involved in litigation or under any discovery obligations, and therefore

Professor Jon C. Dubin/Professor Steve C. Gold

March 22, 2008

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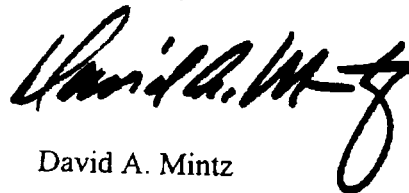
production of client files (privileged or not) to a past and possibly a future adversary cannot be countenanced.

I have reviewed the October 17, 2006 letter submitted to the Honorable B. Theodore Bozonelis by Rutgers counsel James P. Lidon and the March 19, 2008 letter submitted to the Honorable Travis L. Francis by the Rutgers Constitutional Litigation Clinic. Together, the correspondence seek to protect client files which should not be produced pursuant to an OPRA request. I urge Rutgers to continue to defend its Clinic, its clients and its volunteer attorneys.

However, should Rutgers, for any reason, feel compelled to withdraw its objections to the production of the client files – including correspondence and documents that are clearly privileged, I am requesting that all Coalition files in the possession of the Rutgers Environmental Law Clinic, including all communications from or to me, the Coalition's President, be returned to the Coalition in order to prevent their unlawful production in response to an OPRA request filed by Sussex Commons Associates.

Thank you for your cooperation on this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "David A. Mintz", with a stylized flourish at the end.

David A. Mintz

cc: Julia LeMense

EXHIBIT 2

March 25, 2008

Professor Jon C. Dubin
Director of Clinical Programs
Rutgers School of Law - Newark
Center for Law and Justice
123 Washington Street
Newark, New Jersey 07102

Professor Steve C. Gold
Director of the Environmental Law Clinic
Rutgers School of Law - Newark
Center for Law and Justice
123 Washington Street
Newark, New Jersey 07102

Re: Sussex Commons Associates, LLC, *et al.* v.
Rutgers, The State University of New Jersey, *et al.*

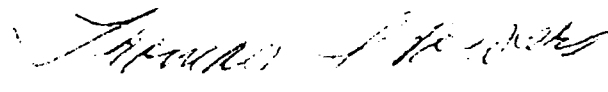
Dear Professors Dubin and Gold:

I am writing as Chair of the Citizens for Responsible Development at Ross' Corner ("CRDRC"), a former client of the Rutgers Environmental Law Clinic. It is my understanding that plaintiff Sussex Commons Associates is attempting to use OPRA to acquire CRDRC client files - including documents protected by the attorney-client and attorney work product privileges. CRDRC is requesting that our files not be unlawfully produced to an adversary who will use those files to continue its documented practice of harassing private citizens believed to be opposed to its development project. CRDRC is not currently subject to any discovery obligations and therefore we object to the production of any of our files.

Should Rutgers choose to withdraw its objections to the production of CRDRC files, I am requesting that all CRDRC files in the possession of the Rutgers Environmental Law Clinic be returned to CRDRC to prevent their unlawful production to Sussex Commons Associates.

Thank you.

Sincerely,


Chair