

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

DELISSIA STERLING

NO. 2021 CW 0876

VERSUS

BOARD OF SUPERVISORS OF
LOUISIANA COMMUNITY AND
TECHNICAL COLLEGES SYSTEM
AND LCTCS FACILITIES
CORPORATION

OCTOBER 22, 2021

In Re: State of Louisiana, through the Board of Supervisors of Louisiana Community and Technical Colleges, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 692859.

BEFORE: McCLENDON, PENZATO, AND HESTER, JJ.

WRIT DENIED. The criteria set forth in **Herlitz Construction Company, Inc. v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981) (per curiam), are not met.

PMc
AHP

Hester, J., dissents and would grant the writ with order. I would reverse the portion of the trial court's May 18, 2021 judgment, which denied the Motion to Compel Return of Inadvertently Disclosed Privileged Documents filed by defendant, the State of Louisiana through the Board of Supervisors of Louisiana Community and Technical Colleges System ("the State"). Under the circumstances presented herein, the ORM Accident Reporting Form and attached witness statements were obtained or prepared in anticipation of litigation or trial, and plaintiff, DeLissia Sterling, has not demonstrated she will be unfairly prejudiced, subject to undue hardship, or subject to injustice by denial of the discovery. See La. Code Civ. P. art. 1424(A); **Maldonado v. Kiewit Louisiana Co.**, 2012-1868 (La. App. 1st Cir. 5/30/14), 152 So.3d 909, 926, writ denied, 2014-2246 (La. 1/16/15), 157 So.3d 1129. Moreover, the ORM Accident Reporting Form and attached witness statements were inadvertently disclosed, and the State took reasonably prompt measures, once it knew of the disclosure, to notify plaintiff of the inadvertence of the disclosure and the privilege asserted. See La. Code Civ. P. art. 1424(D). Thus, I find plaintiff has not shown the State waived its privilege. **Id.** Accordingly, I would grant the State's Motion to Compel Return of Inadvertently Disclosed Privileged Documents and order the plaintiff to return the ORM Accident Reporting Form and attached witness statements as well as any copies to the State.

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DEPUTY CLERK OF COURT
FOR THE COURT