

## ITEM 4.02 | INCIDENT REPORTS

Incident reports have generally been considered not discoverable as falling within the work product privilege because they are typically prepared solely for litigation and have no other business purpose.<sup>13</sup> Incident reports may be prepared for a purpose other than in anticipation of litigation, and when this is so the reports are not work product. For example, reports prepared solely for personnel reasons, such as to decide whether an employee should be disciplined, are not work product.<sup>14</sup> However, even if an incident report is prepared for one reason not in anticipation of litigation, it will still be protected as work product if it was also prepared for litigation purposes.<sup>15</sup>

*Trial Lawyers Section of the Florida Bar  
Conference of Circuit Court Judges  
Conference of County Court Judges*

### Footnotes

<sup>13</sup> *Winn-Dixie Stores v. Nakutis*, 435 So. 2d 307 (Fla. 5th DCA 1983) petition for review denied 446 So. 2d 100 (Fla. 1984); *Sligar v. Tucker*, 267 So. 2d 54 (Fla. 4th DCA 1972) cert. denied (Fla. 1972); *Grand Union Co., v. Patrick*, 247 So. 2d 474 (Fla. 3d DCA 1971).

<sup>14</sup> See *Southern Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d 1377, 1385-86 (Fla. 1994).

<sup>15</sup> *Federal Express Corp. v. Cantway*, 778 So. 2d 1052, 1053 (Fla. 4th DCA 2001); see also *District Board of Trustees of Miami-Dade County College v. Chao*, 739 So. 2d 105 (Fla. 3d DCA 1999).

