


12.16.14 #23

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney 

SUBJECT: Recommendation to Approve Reimbursement of Attorney's Fees
in the Case of Scruggs, et al. v. Clark, et al.
Circuit Civil Case No. 12-7801-CI-02

DATE: December 16, 2014

NOTICE: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS FIND ON THE RECORD THAT ALL REQUIREMENTS OF RESOLUTION 06-83 HAVE BEEN MET AND APPROVE THE REIMBURSEMENT OF ATTORNEY'S FEES TO THE INDIVIDUAL COVERED PERSONS THAT SUCCESSFULLY DEFENDED CLAIMS BROUGHT AGAINST THEM INDIVIDUALLY IN THE ABOVE REFERENCED ACTION. I FURTHER RECOMMEND THAT THE BOARD DIRECT THE CLERK TO MAKE PAYMENT DIRECTLY TO EACH OF THE COVERED PERSONS IN THE AMOUNTS SET FORTH IN THE ATTACHED REQUEST.

DISCUSSION: The case of Scruggs, et al. v. Clark, et al. was a proceeding involving a challenge, brought in the Circuit Court, to the ability of Susan Latvala, John Morroni, Kenneth Welch and Karen Seel to continue to serve as members of the Pinellas County Commission due to asserted term limits in a referendum question that had been determined to be invalid by the Florida Supreme Court. The complaint named these Commissioners in both their official and individual capacities. The County directly provided representation of the Commissioners in their official capacity, but, to avoid potential conflicts of interest, the Commissioners hired separate counsel to represent each of them in their individual capacities.

The Circuit Court dismissed the complaint naming the Commissioners in their individual capacity, and the subsequent complaint, while not specifically naming the Commissioners in their individual capacities, still sought remedies against the Commissioners individually.

Ultimately, both the Circuit Court and the Second District Court of Appeals ruled in favor of the County and all Defendants. Copies of the orders are attached hereto (Exhibit A).

In accordance with Pinellas County Resolution 06-83 (included in Exhibit B), the request for reimbursement was received from the Counsel for the Commissioners individually (Exhibit B). I have reviewed the request in accordance with the Resolution, and it is my opinion that the request is in conformance with the Resolution. It is also my opinion that each of the Commissioners named qualify as "covered persons" as defined in the Resolution, and that the fees sought in successfully defending the claims made are reasonable.

JLB:DSC

Attachment

h:\users\atykb41\wpdocs\outside counsel\messer caparello\bcc memo 121614.docx

EXHIBIT A

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION**

**MARIA SCRUGGS, BEVERLEY BILLIRIS,
and H. PATRICK WHEELER,
Plaintiffs,**

**Case No.: 12-007801CI-21
UCN: 522012CA007801XXCICI**

v.

**DEBORAH CLARK, in her official capacity
as Supervisor of Elections for Pinellas
County, Florida; SUSAN LATVALA,
JOHN MORRONI, KENNETH WELCH,
AND KAREN SEEL all in their capacity
as County Commissioners; and PINELLAS
COUNTY, a political subdivision,
Defendants.**

_____ /

**AMENDED ORDER¹ GRANTING DEFENDANT PINELLAS COUNTY'S MOTION FOR
SUMMARY JUDGMENT; DECLARING MOOT DEFENDANTS COUNTY
COMMISSIONERS' MOTION FOR SUMMARY JUDGMENT; AMENDED FINAL
JUDGMENT FOR DEFENDANTS**

THIS MATTER came before the Court on Defendant Pinellas County's "Motion for Summary Judgment" filed on March 7, 2013; the County's Memorandum in support of the motion filed on March 7, 2013; Defendants County Commissioners Susan Latvala, John Morroni, Kenneth Welch, and Karen Seels' "Motion for Summary Judgment" filed on March 7, 2013; the Commissioner's Memorandum in support of the motion filed on March 7, 2013; Plaintiffs Maria Scruggs, Beverley Billiris, and H. Patrick Wheeler's "Cross Motion for Summary Judgment Incorporating a Memorandum of Law" filed on April 27, 2013; Defendant Commissioners and the County's "Response in Opposition to Plaintiffs' Cross Motion for Summary Judgment and Memorandum of Law"

¹ The amendment to the original order adds Karen Seel in her capacity as County Commissioner as a party to the action and subject of the order. There are no other changes to the substance of the Amended Order and Amended Final Judgment.

filed on April 30, 2013; Defendants Commissioners and County's "Supplemental Memorandum in Support of Defendants' Motions for Summary Judgment and in Opposition to Plaintiffs' Late Filed Summary Judgment Motion" filed on May 8, 2013. The Court has considered the affidavits, notices of filing, request to take judicial notice, and argument of counsels.

Ruling

The current Pinellas County Charter provisions that contain no term limits for the Pinellas County Commissioners are valid and not affected by the recent Telli v. Broward County, 94 So. 3d 504 (Fla. 2012), decision. The 2003 Final Judgment of this Court declaring the 1996 referendum for term limits unconstitutional as required by the Florida Supreme Court in Cook v. City of Jacksonville, 823 So. 2d 86, 95 (Fla. 2002), remains binding. Any future referendums would be governed by Telli. The Charter Amendments approved by the 1996 referendum cannot be revived. This ruling is explained in detail below.

The Court recognizes that there may very well be significant frustration stemming from this decision, particularly by the many voters who approved the referendum years ago. However, this Court is bound to follow the rule of law to enable all persons to rely upon decisions of the court when a judgment has become final without challenge.

Procedural History

The original complaint in this matter was filed on June 26, 2012. On December 7, 2012, the Court entered an order granting with prejudice the motion to dismiss of Defendant Deborah Clark, as Supervisor of Elections for Pinellas County. Also on December 7, 2012, the County and the Commissioners' motions to dismiss were granted without prejudice. On January 10, 2013, Plaintiffs filed an Amended Complaint against the County and the Commissioners. On March 7, 2013, the County and the Commissioners filed separate motions for summary judgment with supporting memoranda. The Plaintiffs electronically filed an untimely cross-motion for summary judgment with memorandum on Saturday, April 27, 2013; which the Court nevertheless has considered. The County and Commissioners filed a response to the cross-motion for summary judgment and a supplemental response. A hearing was conducted on May 2, 2013.

History of the Case

All parties agree that there are no disputed material issues of fact, that only legal issues are involved in this case, and that final summary judgment is appropriate.

This Court feels it is necessary to describe in detail the progression of the issues in this case since 1996.

Eight Is Enough in Pinellas County, a political committee, initiated a petition drive to amend section 3.01 of the Pinellas County Charter to impose term limits of eight consecutive years upon Pinellas County Commissioners; and to amend section 4.03 to impose term limits of eight consecutive years on certain constitutional officers. Sufficient signatures were collected to place the proposed referendum to amend the two sections of the Charter on the November 1996 ballot for the general election.

In July 1996 an action against Pinellas County was commenced by Clair Johnson, a Pinellas County resident and registered voter. The Complaint challenged the constitutionality of the proposed amendment to section 3.01 affecting the Pinellas County Board of County Commissioners and the proposed amendment to section 4.03 affecting Pinellas County constitutional officers. Clair Johnson v. Pinellas County, Case Number 96-004494CI-20. Eight Is Enough in Pinellas County was permitted to intervene in the case (collectively "Eight is Enough").

On September 6, 1996, the Court entered an Order Denying Ms. Johnson's challenge. The referendum was placed on the November 1996 ballot. On October 18, 1996, the five Pinellas County constitutional officers were allowed to intervene ("the Johnson Plaintiffs"). The referendum was approved by the electorate in November 1996.

The Amended Order and Final Judgment ultimately was entered in favor of Eight is Enough in 1999 ("the 1999 Final Judgment"). The Johnson Plaintiffs appealed and the 1999 Final Judgment was affirmed. Pinellas County v. Eight is Enough In Pinellas, 775 So. 2d 317 (Fla. 2d DCA. 2000). In the opinion, the Second District Court of Appeal specifically referred to the ballot initiatives to amend Pinellas County Charter section

3.01 affecting the Board of County Commissioners and section 4.03 affecting the Pinellas County constitutional officers. Id. at 319 n.2.

A petition for discretionary review was filed with the Florida Supreme Court by the Pinellas Clerk of Court, Tax Collector, and Sheriff to review the appellate court decision. On May 23, 2002, in Cook v. City of Jacksonville, 823 So. 2d 86, 95 (Fla. 2002), the Florida Supreme Court quashed the Second District Court of Appeal's decision and remanded for further proceedings.²

Thereafter, on September 8, 2003, on remand from the appellate court this Court entered the "Second Amended Order and Final Judgment on Motion for Summary Judgment" ("the 2003 Final Judgment"). The 2003 Final Judgment concludes that the Supreme Court's decision styled Cook v. City of Jacksonville, 823 So. 2d 86 (Fla. 2002), controls this matter and the 1999 Final Judgment was rescinded.³ Lastly, that the term limits amendments to sections 3.01 and 4.03, Pinellas County Charter, approved by referendum vote of the electorate on November 5, 1996, are unconstitutional for the reasons detailed in the Supreme Court's decision in Cook v. City of Jacksonville.

No appeal was taken from the 2003 Final Judgment. The time for appeal of the 2003 Final Judgment expired more than nine years ago on October 8, 2003.

The Telli Decision and Plaintiffs' Position

On May 10, 2012, the Florida Supreme Court issued the opinion in Telli v. Broward County, 94 So. 3d 504 (Fla. 2012). This ruling breathed new life into Plaintiffs desire to enforce term limits in the county and on June 26, 2012, Maria Scruggs, Beverley Billiris, and H. Patrick Wheeler filed the original Complaint for Declaratory Judgment and Enforcement of Home Rule Charter in the present action.

In Telli the Florida Supreme Court was reviewing the decision of the Fourth District Court of Appeal that held the Florida Constitution permitted Broward County in its Charter to impose term limits on the office of county commissioner. In approving the Fourth District Court of Appeals decision, the Supreme Court stated that it receded from

² This Court notes that the Supreme Court did not quash in part the appellate court's decision; but quashed the entire decision. The term "quash" is defined to mean "[t]o annul or make void; to terminate." Black's Law Dictionary (9th ed. 2009).

³ The term "rescind" is defined to mean "[t]o make void; to repeal or annul." Black's Law Dictionary (9th ed. 2009).

Cook, 823 So. 2d 86, and held that the term limits provided in the Broward County Charter do not violate the Florida Constitution.

Contrary to the Plaintiffs' allegations, the Supreme Court did not vacate or quash the decision in Cook, but instead receded from its prior position.⁴ This is an important distinction.

The Plaintiffs seek a declaration from this Court that based on the 2012 Supreme Court opinion in Telli and the results of the 1996 referendum, the Defendants in this action are in violation of the Pinellas Charter, are disqualified from further service in their positions, and should be removed from office by court order. The Plaintiffs assert that it is clear from the Telli decision that Cook did not apply to the county commissioners and that the county commissioners waived any appeal to the Supreme Court on the referendum issue. However, contrary to this argument, the Supreme Court specifically stated that it need not reach the issue of whether the office of county commissioner is one of the offices to which Cook applies because it was receding from Cook. See Telli, 94 So. 3d at 512.⁵

Motions for Summary Judgment

In its motion for summary judgment, Pinellas County argues that the 2003 Final Judgment is critical to the disposition of this case. As has been noted above, based on the Supreme Court's determination in Cook that the Pinellas County Charter term limits violated the Florida Constitution, this Court entered the 2003 Final Judgment in favor of Ms. Johnson, Pinellas County, the Pinellas Clerk of Court, Property Appraiser, Tax Collector, Sheriff, and Supervisor of Elections. The 2003 Final Judgment set aside as unconstitutional the referendum for term limits approved in November 1996. The 2003 Final Judgment never was appealed and has never been overturned or vacated by any court. The doctrine of res judicata is applicable to the 2003 Final Judgment. See

⁴ The term "recede" is defined to mean "[t]o withdraw or retreat from an agreement, stated position, or the like." Am. Heritage Dictionary (11th ed. 1982).

⁵ In addressing whether the county commissioners' positions were included in the Supreme Court's decision in Cook, this Court holds that the issue is irrelevant in the present case. As has been stated above, and is further explained below, this Court properly followed the May 21, 2003, mandate of the Second District Court of Appeal when it rescinded the 1999 Final Judgment and substituted and entered the 2003 Final Judgment. There was no timely challenge to the 2003 Final Judgment claiming the Supreme Court's holding in Cook was inapplicable to the Pinellas Board of County Commissioners.

Theisen v. Old Republic Ins. Co., 468 So. 2d 434, 435 (Fla. 5th DCA 1985). The 2003 Final Judgment is effective and binding.

Section 102.1682(2), Florida Statutes (2003), states, "If a judgment is entered setting aside a referendum, the election shall be void." Upon becoming final, the 2003 Final Judgment voided the 1996 referendum imposing term limits upon the Board of County Commissioners and upon the constitutional officers.

Plaintiffs' arguments that the Florida Supreme Court's decision in Telli revives the amendments to the Pinellas County Charter pursuant to the 1996 referendum are without merit. The Telli opinion receded from Cook, but did not vacate Cook. Although this may appear to be a minor distinction or technicality, it is a significant difference for legal analysis of prior decisions. The Supreme Court also indicated its intention that Telli only have prospective application when it noted that "the qualifying deadlines have not occurred, there are no reliance issues implicated by this ruling." Telli, 94 So. 3d 513.

"After a judgment has become truly final, a change in the applicable rule of law resulting from a later appellate decision in an unrelated case is not a ground for relief from the prior final judgment." Theisen, 468 So. 2d at 435; see Petrysian v. Metro. Gen. Ins. Co., 672 So. 2d 562, 563 (Fla. 5th DCA 1996). The Telli decision will govern any future proposed referendums on term limits, but does not revive the Charter Amendments approved by the 1996 referendum or render them automatically constitutional. See also § 102.1682(2), Fla. Stat.

In further support of their position, Plaintiffs direct the Court to the unpublished final judgment of the Fourth Judicial Circuit Court for Duval County, Florida entered on August 10, 2012, in City of Jacksonville Florida v. Fuller, Case No. 16-2012-CA-8211. A final order or final judgment of another Florida circuit court outside the Sixth Judicial Circuit may be persuasive or instructive, but is not binding on this Court.

The factual situation before the circuit court in Fuller is distinguishable from the present case. Florida Supreme Court's decision in Cook directly involved the constitutionality of section 12.11 of the Jacksonville Charter imposing term limits. See Cook, 823 So. 2d at 87-88. This same section of the Charter was at issue before the Fourth Judicial Circuit Court in Fuller.

The Fourth Judicial Circuit Court stated in the August 10, 2012, final judgment that the Telli decision "has in effect revived a dormant section 12.11."

This Court finds that the principle of dormancy does not apply in this case as the 2003 Final Judgment was not the subject of an appeal, is res judicata, and precludes the "revival" of section 3.01 of the Pinellas County Charter. The Fourth Judicial Circuit Court's unpublished final judgment is distinguishable and inapplicable to the facts found in the present case.

The County's Motion for Summary Judgment is granted based on the analysis set forth above. Plaintiffs' Cross-Motion for Summary Judgment is denied.

The Commissioners filed a Motion for Summary Judgment seeking to have the Plaintiffs' Amended Complaint dismissed and summary judgment entered based on Plaintiffs failure to comply with the procedures to challenge an election set forth in section 102.168, Florida Statutes (2008-2012). That issue is moot because the Court concludes that Summary Judgment is granted to the Defendants on the merits of the County's motion.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant Pinellas County's "Motion for Summary Judgment" is **GRANTED**.

IT IS FURTHER ORDERED AND ADJUDGED that Defendants County Commissioners Susan Latvala, John Morroni, Kenneth Welch, and Karen Seels' "Motion for Summary Judgment" is declared **MOOT**.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs Maria Scruggs, Beverley Billiris, and H. Patrick Wheeler's "Cross Motion for Summary Judgment Incorporating a Memorandum of Law" is **DENIED**.

IT IS FURTHER ORDERED AND ADJUDGED that **FINAL JUDGMENT** is entered in favor of Defendants Pinellas County and County Commissioners Susan Latvala, John Morroni, Kenneth Welch, and Karen Seels' and against Plaintiffs Maria Scruggs, Beverley Billiris, and H. Patrick Wheeler. **The Defendants shall go hence without day.**

IT IS FURTHER ORDERED AND ADJUDGED that the Court reserves jurisdiction to enter any further and necessary orders in this matter.

DONE AND ORDERED in Chambers, in Clearwater, Pinellas County, Florida, this 16th day of May, 2013.

A TRUE COPY

/s/ John A. Schafer
JOHN A. SCHAEFER, Circuit Judge

Copies furnished to:

John A. Shahan, Esq.
536 E. Tarpon Ave., Ste. 3
Tarpon Springs, FL 34689

John A. Powell, Jr., Sr. Asst. County Atty
Sarah Richardson, Sr. Asst. County Atty
315 Court Street, 6th Floor
Clearwater, FL 33756

Steven C. Dupre, Esq.
Sylvia H. Walbolt, Esq.
Jacqueline R. Ambrose, Esq.
P.O. Box 3239
Tampa, FL 33601

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MARIA SCRUGGS and H. PATRICK
WHEELER,

Appellants,

v.

Case No. 2D13-2808

SUSAN LATVALA, JOHN MORRONI,
KENNETH WELCH, and KAREN SEEL,
all in their official capacity as County
Commissioners; and PINELLAS COUNTY,
a political subdivision,

Appellees.

Opinion filed April 16, 2014.

Appeal from the Circuit Court for Pinellas
County; John A. Schaefer, Judge.

John A. Shahan, Tarpon Springs, for
Appellants.

Sylvia H. Walbolt and Steven C. Dupré of
Carlton Fields, P.A., Tampa; and John A.
Powell, Jr., Assistant County Attorney,
Clearwater, for Appellees.

PER CURIAM.

Affirmed.

ALTENBERND, NORTHCUTT, and SLEET, JJ., Concur.

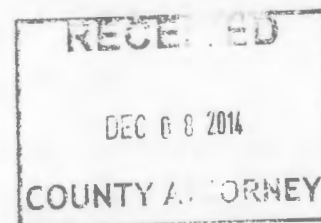


EXHIBIT B



December 3, 2014

James L. Bennett, Esquire
Pinellas County Attorney
315 Court Street
Clearwater, FL 33756



RE: Request for Reimbursement for Attorney's Fees and Costs

Dear Mr. Bennett:

The purpose of this correspondence is to request, on behalf of Susan Latvala, John Morroni, Kenneth Welch, and Karen Seel, reimbursement for attorney's fees and cost, pursuant to Pinellas County Resolution 06-83.

As provided in Section 3 of Pinellas County Resolution 06-83, the following information is provided:

1. The Name and Current Address of the Persons Making the Request

This request is made on behalf of:

Susan Latvala
109 Phillips Way
Palm Harbor, FL 34683

John Morroni
12055 3rd Street East, #203
Treasure Island, FL 33706

Kenneth Welch
2400 Madrid Way South
St. Petersburg, FL 33712

Karen Seel
99 Coe Road
Belleair, FL 33756

2. A Description of the Entity Conducting the Investigation of Proceeding

The proceeding involved a challenge brought in the circuit court to the ability of Susan Latvala, John Morroni, Kenneth Welch, and Karen Seel to continue to serve as members of the Pinellas County Commission under provisions of an amendment to the Pinellas County Charter limiting terms of members of the County Commission to eight years.

3. The Case Number or File Number of the Investigation or Proceeding

Scruggs et al. v. Latvala et al., Case No. 12-7801-CI-021 (Fla. 6th Cir. Pinellas County)

4. A Description of Each Count, Charge and/or Allegation Made or Investigated

The litigation, named Susan Latvala, John Morroni, Kenneth Welch, and Karen Seel in the official and individual capacities, sought a declaration that each was serving illegally as members of the Pinellas County Commission in violation of the an amendment to the Pinellas County Charter limiting terms of members of the County Commission to eight years. It further sought their removal from office.

5. The Dates that the Alleged Wrongful Incidents Are Alleged to Have Occurred

The alleged wrongful incidents occurred in 2008 and continuing onward from that date by continuing to serve on the Pinellas County Commission in violation of the an amendment to the Pinellas County Charter limiting terms of members of the County Commission to eight years.

6. The Covered Persons' Office of Position at the Time of the Incident

At all times relevant to the complaint, Susan Latvala, John Morroni, Kenneth Welch, and Karen Seel was serving as a member of the Pinellas County Commission.

7. Explanation of Why Request Meets the Criteria of the Reimbursement Policy

It was the position of the County Attorney's Office that it could not represent Susan Latvala, John Morroni, Kenneth Welch, and Karen Seel in their individual capacities, even though the allegations of the complaint did not specify any specific acts arising outside or beyond their performance of official duties, other than being elected to office beyond the alleged eight year limitation. Consequently, Susan Latvala, John Morroni, Kenneth Welch, and Karen Seel were each "covered persons" within the meaning of Pinellas County Resolution 06-83, inasmuch as the gravamen of the litigation arose out of and in connection with the most basic tenant involving

performance of public duties and while serving a public purpose; namely, their ability to continue to serve a member of the Pinellas County Commission.

Outside counsel was retained to defend or to have dismissed any allegation in the complaint against Susan Latvala, John Morroni, Kenneth Welch, and Karen Seel which sought relief against them in their individual capacities. Following a hearing on November 28, 2012, the Court dismissed the initial complaint filed against Susan Latvala, John Morroni, Kenneth Welch, and Karen Seel in their individual capacities without prejudice, but cautioned the Plaintiffs that any amended complaint should not name them in anything but their official capacities. A copy of the Court's December 10, 2012 order is attached.

8. Names, Addresses and Telephone Numbers of Attorneys Representing Covered

Officers or Employees

Mark Herron
Joseph Brennan Donnelly
Messer Caparello, P.A.
2618 Centennial Place
Tallahassee, FL 32308
Tel: (850) 222-0720

9. Description of Fee Arrangements / Fees Due and Owing

Attorney time was billed at \$300.00, with each commissioner billed separately on a pro rata basis for time expended or for additional time relating to their particular matter. Each commissioner has paid the amounts billed to them individually.

10. Attorney Billing Statements

See attached.

Sincerely,

Mark Herron

Mark Herron

RESOLUTION NO. 06-83

RESOLUTION TO AUTHORIZE AND ESTABLISH
GUIDELINES FOR THE REIMBURSEMENT OF
ATTORNEY'S FEES AND COSTS INCURRED BY COUNTY
OFFICERS AND EMPLOYEES

WHEREAS, Florida courts, including the Supreme Court, have recognized that public officials are entitled to legal representation at public expense to defend themselves against litigation arising from the performance of their official duties while serving a public purpose; and

WHEREAS, the Florida Attorney General has opined in various Attorney General Opinions, including AGOs 98-12, 90-74, 86-35, and 85-51, that public entities may expend public monies to reimburse public officials who have incurred expenses defending themselves against charges which arose from the performance of official duties and while serving a public purpose; and

WHEREAS, the Board of County Commissioners desires to reimburse its public officers and employees, both present and former, who are required to obtain their own legal representation to defend themselves against charges, whether incurred during civil, criminal, or administrative proceedings or investigations, arising from the performance of their official duties while serving a public purpose; and

WHEREAS, there is a need to establish guidelines for the reimbursement of County officers and employees for attorney's fees and costs incurred while defending themselves against charges arising out of or in connection with the performance of their official duties while serving a public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA, in a public meeting assembled this 2nd day of May, 2006, that the attached document entitled "Guidelines for Reimbursement of Attorney's Fees and Costs Incurred by County Officers and Employees" is incorporated herein by reference and declared to be the official policy for reimbursement of attorney's fees and costs for all officers and employees of Pinellas County.

Commissioner Latvala offered the foregoing Resolution and moved its adoption, which was seconded by Commissioner Stewart, and upon roll call, the vote was:

AYES: Welch, Duncan, Stewart, Harris, Seel, Latvala and Morroni.

NAYS: None.

ABSENT AND NOT VOTING: None.

**GUIDELINES FOR REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS INCURRED
BY COUNTY OFFICERS AND EMPLOYEES**

1. POLICY

The Board of County Commissioners of Pinellas County shall, pursuant to the requirements and procedures stated herein, reimburse present and former public officers and employees, including appointees of the Board or such officers, for the reasonable attorney's fees and costs incurred by covered persons while defending themselves against charges arising out of or in connection with their performance of official duties and while serving a public purpose.

2. DEFINITIONS

A. As used in this policy, the term "successfully defend or prevail" shall apply to individual counts, charges, and/or allegations, and shall mean a dismissal, a finding of not guilty, or a verdict/decision rendered in favor of the persons covered herein, as described below.

B. The term "reasonable attorney's fees" shall mean the fees earned by an attorney and/or attorneys licensed to practice in the State of Florida, based upon the customary per hour rate charged in Pinellas County, Florida for such services rendered for similar work by private non-appointed attorneys within the County, as determined by the County Attorney.

C. The term "costs" shall include actual expenses, other than legal representation, incurred by the covered person, which were reasonable and necessary for the defense of such person against charges which arose out of and in connection with his/her performance of official duties and while serving a public purpose. Such costs shall be supported by a paid invoice or other appropriate documentation and shall be reviewed for reasonableness by the County Attorney.

D. The term "covered persons" who are entitled to reimbursement for attorney's fees and costs shall include only present, or former, County officers or employees who have successfully defended or prevailed against charges in civil, criminal, or administrative forums or investigations that arose out of and in connection with their performance of County duties and while serving a public purpose.

3. PROCEDURES

A. Any person who believes that he/she is a covered person entitled to reimbursement under this policy shall file a written request for attorney's fees and costs with the County Attorney which, at a minimum, shall state the following:

- 1) The name and current address of the person making the request;
- 2) A description of the entity conducting the investigation or proceeding;

- 3) The case number or file number of the investigation or proceeding, if known;
- 4) A description of each count, charge, and/or allegation made or investigated;
- 5) The date(s) that the alleged wrongful incidents are alleged to have occurred;
- 6) The covered person's office or position with the County on the date(s) described in 5) above;
- 7) A narrative explaining why such covered person believes that his/her request meets the criteria set forth in this policy, and that his/her attorney's fees and costs should be reimbursed by the County;
- 8) The name(s), address, and telephone number of the attorney(s) representing such covered person against the counts, charges, and/or allegations described in 4) above;
- 9) A description of the fee arrangement or agreement between the covered person and his/her attorney(s); the amount of the attorney's fees and costs for defense against the counts, charges, and/or allegations described in 4) above; and the total balance due, if any of all attorney's fees and costs that have been incurred in defense against the counts, charges, and/or allegations described in 4) above;
- 10) Attachments reflecting a breakdown of the attorney services rendered and hours incurred, and itemized costs, including paid invoices, if available; and
- 11) Such other information/documentation as the Board of County Commissioners and/or County Attorney may reasonably require.

B. The County Attorney shall review the request and information required above and shall expeditiously make a recommendation to the Board of County Commissioners regarding the reimbursement request. However, the Board of County Commissioners must make a determination on the record that the covered person's request meets the requirements stated in paragraph 2D above.

C. Upon receipt of the written request, the County Attorney shall communicate with the County's "insurance providers," if applicable, and advise the Board whether such "insurance providers" will indemnify the County for any attorney's fees and costs incurred by the covered person in defense against such count, charges, and/or allegations.

D. Notwithstanding any of the above, this policy does not address or pertain to employee discipline or termination proceedings. In the event such disciplinary or termination proceedings occur concurrently with the issues or proceedings covered above, such disciplinary or termination proceedings shall not affect the application of this policy to the above described non-disciplinary or non-termination issues or proceedings.

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL DISTRICT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

MARIA SCRUGGS,
BEVERLEY BILLIRIS and
H. PATRICK WHEELER,

Plaintiffs,

vs.

Case No. 12-007801-CI-021
UCN: 522012CA007801XXCICI

DEBORAH CLARK, in her official capacity as
Supervisor of Elections for Pinellas County
Florida, SUSAN LATVALA, JOHN MORRONI,
KENNETH WELCH AND KAREN SEEL
INDIVIDUALLY AND IN THEIR CAPACITY
AS COUNTY COMMISSIONERS, AND
PINELLAS COUNTY, a political subdivision,

Defendants.

ORDER ON PENDING MOTIONS TO DISMISS

During a November 28, 2012 hearing, the Court heard argument on and considered the MOTION TO DISMISS COMPLAINT FOR DECLARATORY JUDGMENT AND ENFORCEMENT OF HOME RULE CHARTER BY DEFENDANTS, SUSAN LATVALA, JOHN MORRONI, KENNETH WELCH AND KAREN SEEL, INDIVIDUALLY AND IN THEIR CAPACITY AS COUNTY COMMISSIONERS, AND PINELLAS COUNTY (the "County's and Commissioners' Motion To Dismiss"). During the hearing, Plaintiff's counsel and counsel for the Defendants, Latvala, Morroni, Welch and Seel, in their individual capacity, agreed to request that the Court permit removing DEFENDANT SEEL'S MOTION FOR EXTENSION OF TIME WITHIN WHICH TO ANSWER PLAINTIFFS' REQUEST FOR ADMISSIONS, and PLAINTIFFS' REQUEST FOR AN ORDER DEEMING MATTERS ADMITTED PERTAINING TO PLAINTIFFS' REQUEST FOR ADMISSIONS DIRECTED TO DEFENDANT KAREN SEEL, from consideration so that they could confer further with

one another on the matter. As such, the Court heard no argument on that matter. Due notice was given and the Court was fully advised in the premises. Accordingly,

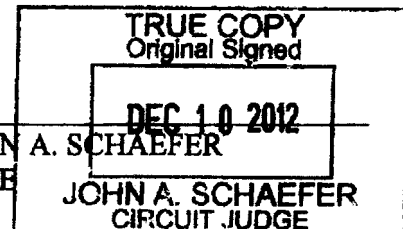
IT IS HEREBY ORDERED AND ADJUDGED as follows:

The County's and Commissioners' Motion to Dismiss is GRANTED IN PART and DENIED IN PART. Specifically, the Complaint is DISMISSED, without prejudice. Plaintiffs shall have thirty (30) days from the date of this Order to file and serve upon the Defendants (other than Defendant Clark) an Amended Complaint that does not re-name Defendant Clark as a party. The remaining Defendants shall then have 30 days after service of the Amended Complaint to file and serve an Answer to the Amended Complaint, but if Plaintiff serves an Amended Complaint that names the four County Commissioners in anything other than their official capacity as Commissioners or that materially changes the causes of action of the Complaint, Defendants shall have 30 days after service within which to respond to the Amended Complaint.

DONE AND ORDERED in Clearwater, Pinellas County, Florida, this ____ day of December 2012.

Copies furnished to:
John A. Shahan, Esq.
Sarah Richardson, Esq.
John A. Powell, Jr., Esq.
Steven C. Dupré, Esq.
Mark Herron, Esq.
Brennan Donnelly, Esq.
Christy Donovan Pemberton, Esq.

THE HONORABLE JOHN A. SCHAEFER
CIRCUIT COURT JUDGE



Susan Latvala

Pinellas County Term Limits

| | | | |
|------------|-----|---|------------|
| 10/08/2012 | MH | Received telephone call from Susan Latvala re potential issues in litigation; received telephone call from John Powell (Pinellas County) re same; conferred with J.B. Donnelly re same / strategy re same; reviewed email memorandum from J.B. Donnelly to John Powell re same; | 0.25 |
| 10/08/2012 | JBD | Reviewed and analyzed law re; term limits | 0.25 |
| 10/09/2012 | MH | Prepared for and attended conference call: Reviewed current case law / potential issues; reviewed status of clients; conferred with J.B. Donnelly re same; reviewed draft budget; | 0.30 |
| 10/09/2012 | JBD | Conferred by telephone with clients; conferred by telephone with John Poullpe; re: status/strategy. | 1.00 |
| 10/11/2012 | MH | Prepared email memorandum to Susan Latvala / John Morroni / Karen Seel / Ken Welch re representation / status / strategy; reviewed email memoranda from John Morroni / Karen Seel re same; | 0.10 |
| 10/15/2012 | JBD | Conferred with John Powell re: status and strategy. | 0.10 |
| 10/16/2012 | MH | Conferred with J.B. Donnelly re status/developments; prepared/filed notice of appearance/designation of email addresses; reviewed email memoranda between J.B. Donnelly and Jack Powell (Pinellas County) re same; | 0.10 |
| | JBD | Conferred with Jack Powell; multiple attempts to contact plaintiff's lawyer re: discovery issues | |
| 10/26/2012 | MH | Received telephone call from Jack Powell re status /developments; | 0.005 |
| 11/20/2012 | MH | Attended / monitored telephone calls between Brennan Donnelly and Jim Bennett and Jack Powell re status / strategy re litigation / motion hearing; conferred with Brennan Donnelly re same; | 0.30 |
| | JBD | Conferred with Jack Powell; conferred with Stephen Dupree; received and responded to multiple emails | |
| 11/26/2012 | MH | Reviewed email memorandum from J.B. Donnelly re scope of motion to dismiss filed by Pinellas County attorneys; | n/c |
| 11/27/2012 | JBD | Prepared for and attended video conference re: status/strategy/hearing on pending motions | 0.35 |
| | MH | Attended video conference with Jack Powell, Sarah Richardson, Stephen Dupre and J.B. Donnelly re status/strategy/developments re hearing on all pending motions/defense of allegations; | 0.25 |
| 11/28/2012 | JBD | Prepared for and attended hearing on all pending motions; conferred with S. Richardson, J. Powell, S. Dupree; conferred with plaintiff's lawyer re: discovery issues; conferred with Commissioners Welch and Seel. | 2.00 |
| | MH | Travel to / from Clearwater / Tallahassee to attend from hearing on all pending motions / defense of allegations; | n/c |
| | | Prepared for and attended hearing on all pending motions; conferred with Brennan Donnelly re same; conferred with Jack Powell, Sarah Richardson and Stephen Dupre re same; | 1.00 |
| 11/29/2012 | MH | Reviewed email memoranda from Jack Powell / Sarah Richardson / Stephen Dupre re draft order(s); reviewed draft order(s); prepared email memorandum to Jack Powell / Sarah Richardson / Stephen Dupre re same; receive telephone call from Jack Dupre re revised responses to requests for admissions; reviewed email memorandum | 0.20 |
| 11/30/2012 | MH | Reviewed email memorandum from Jack Powell re draft order; | n/c |
| | | Hours | 6.205 |
| | | | \$1,861.50 |

John Morroni

Pinellas County Term Limits

| | | | |
|------------|-----|---|------------|
| 10/08/2012 | MH | Received telephone call from Susan Latvala re potential issues in litigation; received telephone call from John Powell (Pinellas County) re same; conferred with J.B. Donnelly re same / strategy re same; reviewed email memorandum from J.B. Donnelly to John Powell re same; | 0.25 |
| 10/08/2012 | JBD | Reviewed and analyzed law re; term limits | 0.25 |
| 10/09/2012 | MH | Prepared for and attended conference call: Reviewed current case law / potential issues; reviewed status of clients; conferred with J.B. Donnelly re same; reviewed draft budget; | 0.30 |
| 10/09/2012 | JBD | Conferred by telephone with clients; conferred by telephone with John Pouollpe; re: status/strategy. | 1.00 |
| 10/11/2012 | MH | Prepared email memorandum to Susan Latvala / John Morroni / Karen Seel / Ken Welch re representation / status / strategy; reviewed email memoranda from John Morroni / Karen Seel re same; | 0.10 |
| 10/15/2012 | JBD | Conferred with John Powell re: status and strategy. | 0.10 |
| 10/16/2012 | MH | Conferred with J.B. Donnelly re status/developments; prepared/filed notice of appearance/designation of email addresses; reviewed email memoranda between J.B. Donnelly and Jack Powell (Pinellas County) re same; | |
| | JBD | Conferred with Jack Powell; multiple attempts to contact plaintiff's lawyer re: discovery issues | 0.10 |
| 10/26/2012 | MH | Received telephone call from Jack Powell re status /developments; | 0.005 |
| 11/20/2012 | MH | Attended / monitored telephone calls between Brennan Donnelly and Jim Bennett and Jack Powell re status / strategy re litigation / motion hearing; conferred with Brennan Donnelly re same; | 0.30 |
| | JBD | Conferred with Jack Powell; conferred with Stephen Dupree; received and responded to multiple emails | |
| 11/26/2012 | MH | Reviewed email memorandum from J.B. Donnelly re scope of motion to dismiss filed by Pinellas County attorneys; | n/c |
| 11/27/2012 | JBD | Prepared for and attended video conference re: status/strategy/hearing on pending motions | 0.35 |
| | MH | Attended video conference with Jack Powell, Sarah Richardson, Stephen Dupre and J.B. Donnelly re status/strategy/developments re hearing on all pending motions/defense of allegations; | 0.25 |
| 11/28/2012 | MH | John Morroni: Received telephone call from John Morroni re hearing on all pending motions / defense of allegations; | 0.30 |
| 11/28/2012 | JBD | Prepared for and attended hearing on all pending motions; conferred with S. Richardson, J. Powell, S. Dupree; conferred with plaintiff's lawyer re: discovery issues; conferred with Commissioners Welch and Seel. | 2.00 |
| | MH | Travel to / from Clearwater / Tallahassee to attend from hearing on all pending motions / defense of allegations; Prepared for and attended hearing on all pending motions; conferred with Brennan Donnelly re same; conferred with Jack Powell, Sarah Richardson and Stephen Dupre re same; | 1.00 |
| 11/29/2012 | MH | Reviewed email memoranda from Jack Powell / Sarah Richardson / Stephen Dupre re draft order(s); reviewed draft order(s); prepared email memorandum to Jack Powell / Sarah Richardson / Stephen Dupre re same; receive telephone call from Jack Dupre re revised responses to requests for admissions; reviewed email memorandum | 0.20 |
| 11/30/2012 | MH | Reviewed email memorandum from Jack Powell re draft order; | n/c |
| | | Hours | 6.205 |
| | | | \$1,861.50 |

Ken Welch

Pinellas County Term Limits

| | | | |
|------------|-----|---|------------|
| 10/08/2012 | MH | Received telephone call from Susan Latvala re potential issues in litigation; received telephone call from John Powell (Pinellas County) re same; conferred with J.B. Donnelly re same / strategy re same; reviewed email memorandum from J.B. Donnelly to John Powell re same; | 0.25 |
| 10/08/2012 | JBD | Reviewed and analyzed law re; term limits | 0.25 |
| 10/09/2012 | MH | Prepared for and attended conference call: Reviewed current case law / potential issues; reviewed status of clients; conferred with J.B. Donnelly re same; reviewed draft budget; | 0.30 |
| 10/09/2012 | JBD | Conferred by telephone with clients; conferred by telephone with John Poullpe; re: status/strategy. | 1.00 |
| 10/11/2012 | MH | Prepared email memorandum to Susan Latvala / John Morroni / Karen Seel / Ken Welch re representation / status / strategy; reviewed email memoranda from John Morroni / Karen Seel re same; | 0.10 |
| 10/15/2012 | JBD | Conferred with John Powell re: status and strategy. | 0.10 |
| 10/16/2012 | MH | Conferred with J.B. Donnelly re status/developments; prepared/filed notice of appearance/designation of email addresses; reviewed email memoranda between J.B. Donnelly and Jack Powell (Pinellas County) re same; | 0.10 |
| | JBD | Conferred with Jack Powell; multiple attempts to contact plaintiff's lawyer re: discovery issues | |
| 10/26/2012 | MH | Received telephone call from Jack Powell re status /developments; | 0.005 |
| 11/20/2012 | MH | Attended / monitored telephone calls between Brennan Donnelly and Jim Bennett and Jack Powell re status / strategy re litigation / motion hearing; conferred with Brennan Donnelly re same; | 0.30 |
| | JBD | Conferred with Jack Powell; conferred with Stephen Dupree; received and responded to multiple emails | |
| 11/26/2012 | MH | Reviewed email memorandum from J.B. Donnelly re scope of motion to dismiss filed by Pinellas County attorneys; | n/c |
| 11/27/2012 | JBD | Prepared for and attended video conference re: status/strategy/hearing on pending motions | 0.35 |
| | MH | Attended video conference with Jack Powell, Sarah Richardson, Stephen Dupre and J.B. Donnelly re status/strategy/developments re hearing on all pending motions/defense of allegations; | 0.25 |
| 11/28/2012 | MH | Ken Welch: Received telephone call from John Ken Welch re hearing on all pending motions / defense of allegations; | 0.30 |
| 11/28/2012 | JBD | Prepared for and attended hearing on all pending motions; conferred with S. Richardson, J. Powell, S. Dupree; conferred with plaintiff's lawyer re: discovery issues; conferred with Commissioners Welch and Seel. | 2.00 |
| | MH | Travel to / from Clearwater / Tallahassee to attend from hearing on all pending motions / defense of allegations; Prepared for and attended hearing on all pending motions; conferred with Brennan Donnelly re same; conferred with Jack Powell, Sarah Richardson and Stephen Dupre re same; | 1.00 |
| 11/29/2012 | MH | Reviewed email memoranda from Jack Powell / Sarah Richardson / Stephen Dupre re draft order(s); reviewed draft order(s); prepared email memorandum to Jack Powell / Sarah Richardson / Stephen Dupre re same; receive telephone call from Jack Dupre re revised responses to requests for admissions; reviewed email memorandum | 0.20 |
| 11/30/2012 | MH | Reviewed email memorandum from Jack Powell re draft order; | n/c |
| | | Hours | 6.505 |
| | | | \$1,951.50 |

Karen Seel

Pinellas County Term Limits

| | | | |
|------------|-----|---|------------|
| 10/08/2012 | MH | Received telephone call from John Powell (Pinellas County) re same; conferred with J.B. Donnelly re same / strategy re same; reviewed email memorandum from J.B. Donnelly to John Powell re same; | 0.25 |
| 10/08/2012 | JBD | Reviewed and analyzed law re; term limits | 0.25 |
| 10/09/2012 | MH | Prepared for and attended conference call: Reviewed current case law / potential issues; reviewed status of clients; conferred with J.B. Donnelly re same; reviewed draft budget; | 0.30 |
| 10/09/2012 | JBD | Conferred by telephone with clients; conferred by telephone with John Poullpe; re: status/strategy. | 1.00 |
| 10/10/2012 | MH | Karen Seel: Conferred with J.B. Donnelly re requests for admissions / requests to produce; | 0.00 |
| 10/10/2012 | JBD | Karen Seel: Reviewed documents forwarded by J. Powell re; Karen Seel requests to produce/request for admissions | 1.30 |
| 10/11/2012 | MH | Prepared email memorandum to Susan Latvala / John Morroni / Karen Seel / Ken Welch re representation / status / strategy; reviewed email memoranda from John Morroni / Karen Seel re same; | 0.10 |
| 10/15/2012 | JBD | Conferred with John Powell re: status and strategy. | 0.10 |
| 10/16/2012 | MH | Conferred with J.B. Donnelly re status/developments; prepared/filed notice of appearance/designation of email addresses; reviewed email memoranda between J.B. Donnelly and Jack Powell (Pinellas County) re same; | 0.10 |
| | JBD | Conferred with Jack Powell; multiple attempts to contact plaintiff's lawyer re: discovery issues | |
| 10/17/2012 | JBD | Karen Seel: Reviewed and revised responses to requests for admissions. | 1.00 |
| 10/26/2012 | MH | Received telephone call from Jack Powell re status /developments; | 0.005 |
| 11/20/2012 | MH | Attended / monitored telephone calls between Brennan Donnelly and Jim Bennett and Jack Powell re status / strategy re litigation / motion hearing; conferred with Brennan Donnelly re same; | 0.30 |
| | JBD | Conferred with Jack Powell; conferred with Stephen Dupree; received and responded to multiple emails | |
| 11/21/2012 | JBD | Karen Seel: Finalized responses to request for admissions. | 0.60 |
| 11/26/2012 | MH | Reviewed email memorandum from J.B. Donnelly re scope of motion to dismiss filed by Pinellas County attorneys; | n/c |
| 11/27/2012 | JBD | Prepared for and attended video conference re: status/strategy/hearing on pending motions | 0.35 |
| | MH | Attended video conference with Jack Powell, Sarah Richardson, Stephen Dupre and J.B. Donnelly re status/strategy/developments re hearing on all pending motions/defense of allegations; | 0.25 |
| 11/28/2012 | JBD | Prepared for and attended hearing on all pending motions; conferred with S. Richardson, J. Powell, S. Dupree; conferred with plaintiff's lawyer re: discovery issues; conferred with Commissioners Welch and Seel. | 2.00 |
| | MH | Travel to / from Clearwater / Tallahassee to attend from hearing on all pending motions / defense of allegations; Prepared for and attended hearing on all pending motions; conferred with Brennan Donnelly re same; conferred with Jack Powell, Sarah Richardson and Stephen Dupre re same; | |
| 11/29/2012 | MH | Karen Seel: Received telephone call from Jack Dupre re revised responses to requests for admissions; reviewed email memorandum from Jack Dupre re same; prepared email memorandum to Brennan Donnelly re same; | 0.10 |
| 11/29/2012 | MH | Reviewed email memoranda from Jack Powell / Sarah Richardson / Stephen Dupre re draft order(s); reviewed draft order(s); prepared email memorandum to Jack Powell / Sarah Richardson / Stephen Dupre re same; receive telephone call from Jack Dupre re revised responses to requests for admissions; reviewed email memorandum | 0.20 |
| 11/30/2012 | MH | Reviewed email memorandum from Jack Powell re draft order; | n/c |
| | | Hours | 9.205 |
| | | | \$2,761.50 |