



INTEROFFICE MEMORANDUM
FROM THE OFFICE OF THE
CITY MANAGER

TO : The Honorable Mayor and Members of the City Commission

FROM : Nicholas C. Mimms, P.E., City Manager

A handwritten signature in blue ink, appearing to read "N. Mimms", is written over the "FROM" line.

RE : **Reimbursement of Attorney's Fees – Report**

DATE : December 21, 2015

Attached is a report from Richard V. Neill, Jr. with regard to the requests from Commissioners Becht and Perona and City Attorney Robert V. Schwerer for the reimbursement of attorney's fees related to ethics complaints that were dismissed. The report is attached for your information.

If you have any questions or need additional information, please contact me.

NCM:jdr

c: Linda Cox, City Clerk
Robert V. Schwerer, City Attorney

LAW OFFICES
NEILL, GRIFFIN, TIERNEY, NEILL & MARQUIS

CHARTERED

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FORT PIERCE, FLORIDA 34950

RICHARD V. NEILL[□]
J. STEPHEN TIERNEY, III
RICHARD V. NEILL, JR.[†][°]
RENÉE MARQUIS-ABRAMS^{*}

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December 18, 2015

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HAND DELIVERY

Mr. Nicholas Mimms, P.E.
City Manager
City of Fort Pierce
Post Office Box 1480
Fort Pierce, Florida 34954

RECEIVED
TIME _____
DEC 21 2015
CITY OF FT. PIERCE
CITY MANAGER'S OFFICE

Dear Mr. Mimms:

You have asked that I review the issue of reimbursing attorneys' fees incurred by Commissioners Becht and Perona, and by City Attorney Schwerer (collectively "the officials"), in relation to ethics complaints which have been dismissed.

You provided the November 18, 2015, letters and enclosures received from their attorney, Mark Herron. I've reviewed that correspondence, including the public reports determining no probable cause on each of the complaints.

I have also reviewed additional documents provided by the officials, including copies of complaints, the Advocate's Recommendation on Mr. Becht's case, and Mr. Schwerer's response to the Advocate's Recommendation on his case.

My understanding is that the City of Fort Pierce does not have any written policy or code provision directly addressing reimbursement of such attorney's fees; and, while there is a State statute providing for defense of civil actions against public officials, there is not one directly addressing reimbursement of expenses incurred in responding to an ethics complaint.

The Courts in Florida have, however, clearly recognized that officials have the right to reimbursement, independent of any statute, for expense incurred in successfully defending claims of malfeasance in office.

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As stated by the Attorney General's Office:

Florida courts have recognized a common law right of public officials to legal representation at public expense to defend themselves against litigation arising from the performance of their official duties while serving a public purpose. The purpose of this rule is to avoid the "chilling effect" that a denial of representation might have on a public official in performing his duties properly and diligently. Such an obligation arises independent of statute, ordinance or charter and "is not subject to the discretion of the keepers of [the] City coffers".

Ops. Att'y Gen. Fla. 98-12.

This is a right which has been extended to successful defense of ethics complaints. See, Maloy v. Board of County Commissioners of Leon County, 946 So.2d 1260 (Fla. 1st DCA), rev. den., 962 So.2d 337 (Fla. 2007); Ellison v. Reid, 397 So.2d 352 (Fla. 1st DCA 1981); and Ops. Att'y Gen. Fla. 90-74 (1990).

So, if the City Commission concludes on the facts presented that the officials incurred the expense in successfully defending themselves against ethic's complaints arising from the performance of their official duties while serving a public purpose, the officials are entitled to reimbursement of that cost.

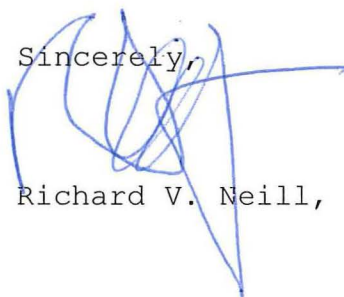
The Courts do recognize that a public purpose is served by defending an unfounded complaint or action, because, "the public has an overriding interest in ensuring the effective and efficient functioning of its governing body", Thorner v. City of Fort Walton Beach, 568 So.2d 914, 917 (Fla. 1990), and, "[i]f a public officer is charged with misconduct while performing his official duties and while serving a public purpose, the public has a primary interest in such a controversy and should pay the reasonable and necessary legal fees incurred by the public officer in successfully defending against unfounded allegations of official misconduct". Ellison, supra, at 354.

Under the circumstances as I understand them, and based on the decisions of Florida's appellate courts, I recommend reimbursement of the expenses as requested.

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Finally, I'm enclosing our statement for services on this matter and thank you for asking me to review this issue for the City.

Sincerely,



Richard V. Neill, Jr.

RVNjr/hg
Enclosure

cc: Tony Barnes, Purchasing Director (w/encl.) (hand delivery)