

CITY OF FORT PIERCE

CITY COMMISSION AGENDA

Special Meeting - Monday, March 10, 2016 - 1:30 p.m.

City Hall - City Commission Chambers, 100 North U.S. #1, Fort Pierce, Florida

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **CITY ATTORNEY INTERVIEWS**
 - a. Gary M. Glassman
 - b. John S. Turner
 - c. Philip N. Sherwin
 - d. James M. Messer
 - e. Iola T. Mosley

5. **COMMENTS FROM THE PUBLIC**

Any person who wishes to comment may be heard at this time. Please limit your comments to three (3) minutes or less, as directed by the Mayor, as this section of the Agenda is limited to fifteen minutes. The City Commission will not be able to take any official actions under Comments from the Public. Speakers will address the Mayor, Commissioners, and the Public with respect. Inappropriate language will not be tolerated.

6. **NEW BUSINESS**

- a. Discussion, ranking and selection of City Attorney.

7. **ADJOURNMENT**

Any person seeking to appeal any decision by the City Commission with respect to any matter considered at this meeting is advised that a record of proceedings is required in any such appeal and that such person may need to insure that a verbatim record of the proceedings is made including the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at (772) 467-3052 at least 48 hours prior to the meeting.

City Commission Special Meeting, 1:30 pm

Meeting Date: 03/10/2016

Re:

Information

SUBJECT:

Gary M. Glassman

Attachments

Glassman

Form Review

Form Started By: Linda Cox

Started On: 03/08/2016 11:48 AM

Final Approval Date: 03/08/2016

COLIN BAENZIGER  ASSOCIATES

EXECUTIVE RECRUITING

Gary M. Glassman

*Fort Pierce City Attorney
Candidate Report*

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Cover Letter and Resume

Gary M. Glassman, Esq.
7119 Sand Lake Reserve Drive
Apt. 1202
Orlando, Florida 32819
407-721-2248

December 28, 2015

Colin Baenziger, M.P.A.
Colin Baenziger & Associates
2055 South Atlantic Avenue, Suite 504
Daytona Beach Shores, Florida 32118

Email address: Recruit37@cb-asso.com

Re: City Attorney, City of Ft. Pierce, Florida

Dear Mr. Baenziger:

Please accept this cover letter and enclosed resume as my application for the position of city attorney for the City of Ft. Pierce, Florida.

As you can see from my resume, I have represented municipalities, counties, and school districts for the last fifteen years. My approach has always been to provide the best the legal services to my client while being mindful of the costs and time associated with the work. I enjoy working with elected officials and government employees and supporting them in the work they do for their community. As legal counsel, I view my role as providing direct and clear answers to questions and issues before the commission or board, and acting as a team player with my client. While my goal is to prevent litigation, when it becomes necessary, I am a zealous and professional advocate on behalf my client.

In addition to practicing law, since 2009, I have been an adjunct instructor at the University of Central Florida teaching law courses to code enforcement officers, board members, and police officers. This experience has afforded me a unique opportunity to interact with some very dedicated employees, and to better understand the practical side of code enforcement.

With this background, I am certain I would be an excellent city attorney for Ft. Pierce. Attached to this letter are the names and contact information for several references. Should you need any additional information, please contact me at the above address or phone number. I look forward to hearing from you.

Sincerely,



GARY M. GLASSMAN, ESQ.

Gary M. Glassman, Esq.

7119 Sand Lake Reserve Drive, #1202
Orlando, Florida 32819

(407) 721-2248 – Cell
gglassman@orlandolaw.net

SUMMARY

More than fifteen years of experience representing local governments and school districts. Provided legal advice to commissions, boards, departments and employees of municipalities and school districts. Litigated over 200 cases in areas of law involving local governments.

EDUCATION

B.A., University of Rochester, Rochester, New York

J.D., Syracuse University College of Law, Syracuse, New York

RELEVANT LOCAL GOVERNMENT EXPERIENCE

Of Counsel, Garganese, Weiss & D'Agresta, P.A., Orlando, Florida, 2008 - Present

- * Provide legal representation to cities, school districts, and counties in Central Florida. Attend board and commission meetings and provide advice to various departments and agencies. Draft contracts, opinion letters, agreements, and other legal documents. Conduct legal research on issues confronting clients.
- * Represent local governments and school boards in state and federal court litigation in the areas of land use and zoning, labor and employment, civil rights, sunshine law, torts, procurement, contracts, and labor arbitrations and hearings before PERC.
- * Supervise the work of associates, paralegals, and support staff. Build and lead a team of attorneys, paralegals, and staff to conduct litigation on behalf of clients.

Senior Assistant City Attorney, City of Tampa, Florida, 2006-2008

- * Provided legal representation to the mayor, city council, and other boards and departments of the city. Draft agreements, contracts, ordinances, and other legal documents on behalf of the city. Conducted legal research on issues confronting the city.
- * Represented the city in state and federal court litigation in the areas of land use and zoning, labor and employment, civil rights, eminent domain, contracts, and torts.

- * Provided legal advise to the city departments of minority business affairs, human resources, community affairs, and the human rights board.
- * Supervised several assistant city attorneys and support staff.

Assistant County Attorney, Orange County, Florida, 2001-2006

- * Represented the county in federal and state court litigation in the areas of civil rights, land use and zoning, employment, contracts, and eminent domain.
- * Represented the county before the planning and zoning board, risk management committee, and human resources department.

OTHER EXPERIENCE

Partner, Glassman & Golden Norris, Sarasota, Florida

Associate, Becker & Poliakoff, P.A., Sarasota, Florida

Associate General Counsel, Fay's Drug Company, Inc., Liverpool, New York

GOVERNMENT TEACHING

Since 2009, I have been an adjunct instructor at the University of Central Florida, Institute of Government, **teaching courses in code enforcement** to code enforcement officers, board members, and police officers. I have also been a speaker at the annual conferences for the Florida Association of Code Enforcement and the American Association of Code Enforcement.

ADMISSIONS

Member of the Bar of the States of Florida and New York
 United States Supreme Court
 Eleventh Circuit Court of Appeals
 United States District Court, Southern District of Florida
 United States District Court, Middle District of Florida

GOVERNMENT LITIGATION EXPERIENCE

In the last 15 years I have been lead counsel in over 200 cases involving local governments and school districts in the areas of civil rights, employment law, land use law, torts, eminent domain, contracts, adult entertainment, and fair housing. A few of the notable cases are:

Konikov v. Orange County, 410 F.3d 1317 (11th Cir. 2005) - A challenge to the county's zoning code based upon the First Amendment and the Religious Land Use and

Institutionalized Persons Act.

Bell v. City of Winter Park, 745 F.3d 1318 (11th Cir. 2014) - A challenge to the city's ordinance creating a "buffer zone" prohibiting targeted picketing in a residential area based upon the First Amendment.

Morgran Co., Inc. v. Orange County, 818 So.2d 640 (Fla. 5th DCA 2002) - A claim by a developer that the county had breached a developer's agreement based on contract zoning.

Atlantic Housing Partners L.L.P. v. City of Winter Springs, U.S. Dist. Ct., M.D. Fla., Case No. 6:10-CV-1905-MS - A claim by a developer that the city's decision to deny a building application violated the state and federal Fair Housing Acts.

Price v. School Board of Indian River County, U.S. Dist. Ct., S.D. Fla., Case No. 14-CV-14007-DMM (2014) - An employment discrimination case involving sexual harassment that was tried before a jury which returned a verdict in favor of the school board.

Ruello v. City of Tampa, Cir. Ct., 13th Jud. Cir., Case No. 04-CA-9125 (2004) - A claim of employment by a city employee that was tried before a jury resulting in a verdict for the city.

Beeline Entertainment Partners, Ltd. v. Orange County, 243 F.Supp.2d 1333 (M.D.Fla. 2003) - A challenge to the county's adult entertainment ordinance that was dismissed by the court.

Smith v. City of Tampa, Cir. Ct. 13th Jud. Cir., Case No. 07-CA-3388 (2007) - A claim against the city for inverse condemnation and other damages that was tried before a jury which returned a verdict mostly favorable to the city.

Lorenzo v. City of Tampa, 2007 WL 4374288 (11th Cir. 2007) - A challenge to the city's ban on distributing commercial pamphlets during certain events in Ybor City based upon the First Amendment. The ordinance was upheld by the 11th Circuit Court of Appeals.

Soliman v. City of Tampa, 2008 WL 1931320 (M.D.Fla. 2008) - A claim of religious employment discrimination against the city that was dismissed by the court on a motion for summary judgment.

Vilbrun v. School Board of Osceola County, DOAH, Case No. 10-7209 - A claim of employment discrimination against the school district that was tried before an administrative judge resulting in a verdict for the district.

Gifford v. Pam Iorio, Mayor, 2008 WL 2437540 (M.D.Fla 2008) - A claim of inverse condemnation against the city and numerous city employees including the mayor for damages. The mayor and other individuals were dismissed from the case under the defense of qualified immunity.

References of Gary M. Glassman

1. Mr. Thomas J. Wilkes, Esq.
Shareholder
Gray Robinson, PA
301 East Pine Street, Suite 1400
Orlando, Florida 32801
407-244-5693
tom.wilkes@gray-robinson.com

Mr. Wilkes was the county attorney for Orange County who hired me in 2001 as an assistant county attorney.

2. Mr. Mark A. Munas
Assistant Superintendent
The School District of Osceola County, Florida
817 Bill Beck Boulevard
Kissimmee, Florida 34744
407-518-2900
munasm@osceola.k.12.fl.us

I worked with Mr. Munas during my representation of the school district.

3. Mr. Usher "Larry" Brown, Esq.
Shareholder
Greenspoon Marder
201 East Pine Street, Suite 500
Orlando, Florida 32801
407-692-9114
larry.brown@gmlaw.com

Mr. Brown was the founding partner of my current law firm, and recently left to join another firm. I worked with Mr. Brown for seven years on numerous matters involving our government clients.

4. Ms. Vivian Cocotas, Esq.
Senior Attorney
Garaganese, Weiss & D'Agresta, PA
111 North Orange Avenue, Suite 2000
Orlando, Florida 32801
407-425-9566
vcocotas@orlandolaw.net

I have worked with Ms. Cocotas for the past seven years on numerous matters.

Candidate Introduction

GARY M. GLASSMAN

EDUCATION

Bachelor of Arts, University of Rochester, Rochester, New York
Juris Doctor, Syracuse University College of Law, Syracuse, New York

EXPERIENCE

Of Counsel, Garganese, Weiss & D'Agresta, P.A., Orlando, Florida
Senior Assistant City Attorney, City of Tampa, Florida
Assistant County Attorney, Orange County, Florida

BACKGROUND

For the past thirteen of the last fifteen years, I have worked in the Orlando/Central Florida region. The population of the region is over 1.5 million people and growing. The region is the home of Walt Disney World, Universal Studios, Sea World, the Orange County Convention Center, and many other tourist attractions that draw more than sixty million visitors each year from all over the world. In addition to its tourist attractions, the region is home to several universities and colleges, including the second largest university in the country, the University of Central Florida, Rollins College, and Valencia Community College. While tourism remains the number one factor in the region, there has been a continued growth in other industries. Tupperware, Darden Restaurants, AAA, and the Golf Channel have headquarters in the region. Martin Marietta has a large facility in Orange County. One of the newest ventures in the area is the Lake Nona Medical City, a 650 acre health and life sciences park dedicated to research, care, and education in the health field.

The region also contains state of the art recreational, cultural, and athletic facilities. The Amway Center is the home to the Orlando Magic, and men's and women's professional soccer teams have begun play in Orlando. The newly built Dr. Phillips Center for the Performing Arts, located in downtown Orlando, hosts Broadway shows and other cultural events. The region boasts several museums, and residents enjoy numerous lakes and parks throughout the area.

For the first five and a half years, I worked for the Orange County Attorney's Office. At the time, the office had approximately twenty attorneys, and ten support staff. As a member of the litigation section, I supervised two attorneys, a paralegal, and a support assistant. I was also responsible for hiring and supervising the two summer interns each year. All of the work assigned to me was performed by myself and my staff, not outside counsel. In fact, during the time I was with the county attorney's office, I brought into the office work that had been previously assigned to outside counsel (i.e. labor and employment matters). The most significant legal issues that the county faced centered around the explosive growth in population fueled by tourism and other industries, and the demand for infrastructure to meet the growth. The development of new communities and commercial developments, roads, schools, and support systems created constant legal issues for the county.

GARY M. GLASSMAN

For the past seven and a half years, I worked for a private law firm, Garganese, Weiss & D'Agresta, PA. (f/k/a Brown, Garganese, Weiss & D'Agresta, P.A.). The firm represents municipalities and school boards in Central Florida, and consisted of 15 to 20 lawyers, and 10 staff persons. I supervised two to three associates and paralegals as well as support staff. As outside counsel to the municipalities and school boards, we worked with in house counsel if such counsel existed. Most of the legal issues concerning the cities we represented involved land use, labor relations, and a variety of litigation matters including civil rights, contracts, eminent domain, torts, and employment cases.

For two years, I worked in the City of Tampa's Attorney's Office. The City of Tampa and Hillsborough County region is similar to the Orlando/Central Florida region. The office had approximately 15 full time attorneys and 5 part time attorneys. In addition, there were 10 support staff employees. I supervised two attorneys and support staff. All of my work was performed by myself and my staff, no outside counsel assisted us. Again, during my time in the office, I brought in work that had previously been performed by outside counsel. As one of the largest cities in the state, Tampa faced numerous legal challenges. Therefore, it was not unusual to be working on a variety of issues at the same time. Some of the issues were land use problems, civil rights matters, labor and employee problems, environmental concerns, housing issues, contract matters, eminent domain situations, and police and fire problems.

GENERAL MANAGEMENT STYLE AND EXPERIENCE

I am interested in the city attorney position because I enjoy being challenged in my work, and because I believe that I can meet that challenge and do an excellent job for the city. The most important attributes for a successful city attorney are first to listen to the commission or council, and understand what the commission is trying to accomplish. Once a clear understanding is reached, the city attorney should identify what issues need to be addressed. The city attorney should then insure that all the facts of the situation are discussed with the commission, and to provide a well researched and thought out response in a timely and efficient manner to the commission. I would always strive to make sure the commissioners are knowledgeable about all of these factors to enable them to resolve the issue.

When a law suit has been filed against the city, my approach is to review the case with the persons involved or those who have the most knowledge of the case. Once completed, I would then determine if the suit has merit, examine all possible defense available to the city, confer with the commission, and then decide with the commission on the short term and long term strategy for the case. Every case is unique. The city will, at times, be better served by attempting to settle the case as early as possible. Some, however, need to be litigated. An analysis of a case, with the advice of the commission, is always ongoing to insure that the interests of the city are well served.

In each of the places that I have worked, when presented with a legal issue, I have first sought to identify the issue and gather as much background information as possible. I accomplish this by talking to the persons involved in the situation, reviewing documents, conducting legal and other

GARY M. GLASSMAN

research, and generally familiarizing myself with the issue. When working with a team, I would delegate assignments to members of the team. We then work together to resolve the issue. In short, my management style has been to work together with others to solve problems as quickly as possible while achieving the best results for the city.

In communicating with elected officials, I am straight forward, and present both the legal positive and negative aspects of the issue so that the officials can make a well informed decision. I respond to each member of the commission in the same way. In working with a city manager or elected official in this way, the commission and city manager are able to achieve their goals. I maintain good working relationships with the commission and city manager as well as all department heads. My goal is always to resolve problems, not create them.

Being accessible, possessing strong communication skills, willing to work beyond usual hours, a desire for excellence, and a commitment and loyalty to my client are some of my strengths. The city attorney position would present me with a new challenge. My strengths have always been on exhibit when I am challenged. Weaknesses would include difficulty in delegating work to others, sometimes preferring to do it myself. I have also been told by co-workers and family members that I can be long winded and repetitive. As my wife has said: "Gary, land the plane already."

My greatest achievement would come in some of the cases that I have litigated for my clients. Many of the cases have become precedent setting, and I am proud of the work that I did on these cases. Having said that, I must add that I am as equally proud of the cases that I have settled without litigation or prolonged litigation. One such case involved the City of Winter Springs. The city was sued by a developer who wanted to build a low income housing project in the city. The city, at first, denied the development, and the developer sued. Rather than go through protracted litigation, another attorney for the city and I sat down with the developer and his attorneys to see if a resolution could be achieved. After several meetings, we found an excellent alternative location for the project that was acceptable to the developer and approved by the city. The developer was able to go forward with the project, and the city benefited from the development. I was happy to be a part of this successful resolution.

In addition, one of my greatest achievements has come in a class room. For the past eight years, I have been an instructor for code enforcement classes at the University of Central Florida. The achievement has come in providing educational classes for these hard working city employees, and helping them to understand code enforcement law.

My greatest failure came in working for a law firm that provided legal services in an area that I had no interest in or passion for. My tenure was short lived. I learned that no matter the circumstances, I would only be successful when the work that I am doing challenges me, interests me, and brings out the best in me. I learned that it is best not to settle, but to do the type of legal work about which you can be passionate.

GARY M. GLASSMAN

When an employee's work is not satisfactory, my approach is to confer with the employee privately to discuss the employee's work performance. I try to be positive rather than negative to determine the reasons behind the poor performance. I listen to the employee. If the performance problems can be addressed, I work with the employee to offer ways to improve. However, after a period of time, if there is no improvement, then the employee would be dismissed. If improvement is demonstrated, then I can encourage the employee to continue on that path. I have had to terminate several employees, mostly paralegals, whose work performance was unsatisfactory. In meeting with the employee, I explain the reasons for the termination, but take care not to elaborate excessively.

The city is transitioning from having a law firm represent its legal needs to an in house attorney. My first step would be to immediately meet with the former counsel and all members of the firm to transfer all legal matters to me. At the same time, I would arrange for meetings with each commissioner. These meetings would provide an opportunity to listen to the commissioner describe, in detail, their assessment of both the good and bad ways in which the prior city attorneys performed their responsibilities. We would also address their expectations of me. I would also meet with department heads to get an understanding of their relationship with the city attorney, and discuss ways to improve that relationship. By the end of the first six months on the job, I would have a firm grasp of all work being done by the city attorney's office, establish strong communications with each commissioner and department head, and begin looking forward to establishing ways to make the city attorney's office more efficient and responsive to the needs of the city.

In the few times I have dealt with the media, my practice has been to provide only information that is absolutely necessary to respond to the question. If the city has a media or communications department, I often defer to their expertise. Naturally, if the media requests something that is not privileged and is covered by the Public Records Act, I respond accordingly.

In my leisure time, my wife and I enjoy bike riding, kayaking, swimming, and travel. My own interests include cooking, and because of the cooking, working out at the gym. We have two grown children, and we enjoy spending as much time with them as they will allow.

There is nothing that I have done that would embarrass the client. I do not belong to any organizations that would cause any embarrassment to the client. There are no community activists who would have any "dirt" on me or any member of my family.

REASON FOR WANTING TO LEAVE CURRENT OR MOST RECENT JOB SECTION

My reason for leaving my most recent job is the challenge that a city attorney position would offer me. I believe that I have the experience and qualifications to do an excellent job for the City of Ft. Pierce. I look forward to assisting the commissioners and department heads in furthering the goals of the city, and making it an even greater place to live, work, and enjoy.

GARY M. GLASSMAN

SIX ADJECTIVES OR PHRASES I WOULD USE TO DESCRIBE MYSELF

Good Communicator
Diligent
Proactive
Hard Working
Committed
Experienced

CURRENT/MOST RECENT SALARY

My most recent compensation was \$150,000.

CB&A Background Checks

**Background Check Summary for
GARY M. GLASSMAN**

Criminal Records Checks:

Nationwide Criminal Records Search	No Records Found
County	
Orange County, FL	No Records Found
Hillsborough County, FL	No Records Found
State	
Florida	No Records Found

Civil Records Checks:

County	
Orange County, FL	No Records Found
Hillsborough County, FL	No Records Found
Federal	
Florida	No Records Found

Motor Vehicle

Florida	No Records Found
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Credit

Excellent

Bankruptcy

No Records Found

Education

Confirmed

Employment

[Results Pending](#)

Bar Certification/License

Member in Good Standing
Bar #825786

Background Check Summary for GARY M. GLASSMAN

Gary Mark Glassman

Member in Good Standing

Eligible to Practice Law in Florida

Bar Number: 825786

Mail Address: 7119 Sand Lake Reserve Dr # 1202
Orlando, FL 32819
United States

Office: 407-721-2248

Email: ggnlawgary@yahoo.com

Personal Bar URL: www.floridabar.org/mybarprofile/825786

vCard:  ?

County: Orange

Circuit: 9

Admitted: 10/18/1989

10-Year Discipline History: None

Law School: Syracuse University College of Law

Sections: City, County & Local Govt Law
Labor and Employment Law



**Background Check Summary for
GARY M. GLASSMAN
Personal Disclosure**

Personal Disclosure Questionnaire

Name of Applicant: Gary M. Glassman

The following questions are designed so that we will be able to make full disclosure to our client concerning your background. Please answer them honestly. Cutting corners or misrepresenting your past will result in you being eliminated from all further searches conducted by this firm. We understand that frivolous charges are sometimes made and that charges do not mean you were guilty. We also understand that you may have been wronged and needed to seek compensation. The bottom line is that we want to be certain that our client is fully informed. If you have any questions, please contact us for clarification.

Please explain any yes answers on a separate sheet of paper.

1. Have you ever been charged or convicted of a felony?
Yes No
2. Have you ever been accused of or have been involved in a domestic violence or abuse incident?
Yes No
3. Have you ever declared bankruptcy or been an owner in a business that did so?
Yes No
4. Have you ever been the subject of a civil rights violation complaint that was investigated or resulted in a lawsuit?
Yes No
5. Have you ever been the subject of a sexual harassment complaint that was investigated or resulted in a lawsuit?
Yes No
6. Have you ever been convicted of driving while intoxicated?
Yes No
7. Have you ever sued a current or former employer?
Yes No
8. Do you have a personal My Space, Face Book or other type of Web Page?
Yes No
9. Do you have a personal Twitter Account?
Yes No
10. Is there anything else in your background that, if made public, would cause you, our client or our firm embarrassment if it came to light through the press or any other mechanism?
Yes No

11. Please provide a list of any lawsuits in which you are or have been a party either as plaintiff or defendant.

1986 - Divorce case, Onondaga Cty, NY.
Case No. - unknown
Plaintiff

Attested to:

Gary M. Glassman
Signature of Applicant

Please email this form via PDF DOCUMENT to Lynelle@cb-asso.com or via fax to (888) 539-6531 no later than 5:00 PM CST 02-02-2016.

(Note: Please be sure to sign the form with your actual signature if you are sending Fax or PDF Document)

CB&A Reference Notes

CB&A Internet Research

Daytona Beach News-Journal (FL)
June 28, 2012

Refunds follow Palm Coast red-light lawsuit

Author: FRANK FERNANDEZ

PALM COAST - More than 13,500 motorists slapped with red-light camera citations in this city qualify for a small refund with the partial settlement of a class-action lawsuit. Only motorists cited prior to July 1, 2010, qualify for the settlement reached with American Traffic Solutions, which provides the video systems used in Palm Coast. The settlement does not include the city of Palm Coast, which was also sued but is continuing to fight. The refund comes to 30 percent of ATS's portion of the fine, said Jason D. Weisser, an attorney with Schuler, Halvorson and Weisser, who represents William Mayfield, the driver who filed the lawsuit. Prior to July 2010, ATS's portion of the fine was \$45, so 30 percent of that comes to \$13.50. But attorneys' fees and legal costs would come out of the 30 percent, and Weisser said in an interview that he did not have the exact refund amount available.

Circuit Judge Dennis Craig preliminarily approved the settlement Wednesday during a hearing in circuit court, Weisser said. Craig also asked for more information on a motion from the city to dismiss the lawsuit. "This is only a small refund because it's only a settlement with ATS, not with the city," Weisser said. Motorists probably won't receive refunds for another nine months, Weisser said. More than 13,500 people who paid a red-light camera citation to Palm Coast before July 1, 2010, are part of the class-action lawsuit, according to court records. During the next six months, ATS will mail out postcard notices to people who qualify for the settlement. They must then fill out a claim form. Craig could award Mayfield a larger portion of the settlement, Weisser said. "The court can award him additional funds for all the time and effort he put into the case," Weisser said.

Before July 1, 2010, the total fine was \$125 with Palm Coast receiving \$80 and the rest going to ATS. After that date a state law took effect that strengthened cities' power to run red-light camera systems but also gave the state a cut of the money. Camera fines increased to \$158, with the state taking \$83 from each citation and leaving the city \$75 to split with the camera vendor. Palm Coast has had 10 cameras watching six intersections since 2008 when it became the first city in Volusia or Flagler counties to use the system. Since then Daytona Beach and Holly Hill have followed, with DeLand set to have its own cameras rolling later this summer. The Volusia County cities all use Gatso USA as their red-light camera company.

Mayfield sued Palm Coast and ATS in 2009 after he was slapped with a red-light camera citation. The city said video showed him illegally turning right on red at Palm Coast and Cypress Point parkways. "Obviously the city was getting a substantial amount of the revenue," Weisser said. "And they are not settling with us, so we are going to continue the litigation against them." Palm Coast filed a motion earlier this year asking Craig to throw out Mayfield's suit based on a 3rd District Court of Appeal decision in the case of Masone vs. the city of Aventura. In the motion, attorneys for Palm Coast argued that the 3rd District Court of Appeal, in ruling in

Internet – Newspaper Archives Searches
Gary M. Glassman
(Articles are in reverse chronological order)

Aventura's favor, said that "municipalities enjoy broad home rule powers, the regulation of vehicular traffic is a well-established legitimate exercise of municipal police power."

But Weisser argued Wednesday before Craig that the two cases are different and therefore Craig should not dismiss Mayfield's claim against Palm Coast. Craig did not rule on whether to dismiss the lawsuit. Instead he asked attorneys on both sides to submit legal information on the issue of whether the owner of a car can be cited but not the driver, said **Gary Glassman**, who represented the city. That information will be submitted in 20 to 30 days, **Glassman** said. "His concerns seem to rest in that area," **Glassman** said, "that when the picture is taken by the camera, it's taken of the car. But we can't identify the actual body who was driving the car, so he had some concerns about that and he wants some additional briefing."

Internet – Newspaper Archives Searches
Gary M. Glassman
(Articles are in reverse chronological order)

West Volusia Beacon, The: Web Edition Articles (FL)
February 26, 2010

It's been a long three months in Orange City

Author: Jen Horton

Orange City is in the third month of investigating its Police Department. Related to that investigation, the city and its police chief are defendants in a lawsuit filed by The Beacon over access to public records. In the meantime, City Council has fired its interim city manager, hired a new one, and is on the verge of hiring a permanent chief executive. And now the police chief has announced his retirement.

It's time to take a look at what's been going on in Orange City since November:

Nov. 29 — Twenty members of the Orange City Police Department sign a complaint against a supervising officer, Lt. Gregory Melvin. The complaint is filed with Police Chief Jeffrey Baskoff as an internal complaint.

Nov. 29 — According to City Attorney William Reischmann, Florida Statute 112, the "Police Officers' Bill of Rights," goes into effect.

Dec. 7 — Chief Baskoff sends an e-mail to all sworn officers in the department, to let them know he has reassigned Melvin to a job where he will have no contact with subordinates.

Dec. 8 — At the regular meeting of the Orange City Council, Council Member Tom Abraham asks about morale in the Police Department. Interim City Manager Chester Murray replies that issues have surfaced that need to remain as personnel issues. Attorney Reischmann comments that all complaints received about a police officer are investigated. He advises the council of the Police Officers' Bill of Rights, and urges caution in dealing with the matter, as the council could find itself "embroiled in something it doesn't necessarily need to be."

Dec. 14 — An anonymous letter is sent to Orange City Council members. The letter has the original complaint and the chief's response attached. The letter states Chief Baskoff's reassignment of Melvin was not an adequate solution, and claims the chief is not looking out for the best interests of his officers. The letter calls for the removal of Melvin and Baskoff.

Dec. 14 — The Beacon makes its first public-records request with the City of Orange City, asking to examine Lt. Melvin's personnel file.

Dec. 17 — The Beacon publishes "Police sign complaint about fellow officer."

Jan. 8 — Gilbert Chappell of Video Verification signs an agreement to perform an investigation of the Orange City Police Department.

Jan. 12 — Teamsters representative Jeff Candage addresses the City Council at its regular

Internet – Newspaper Archives Searches
Gary M. Glassman
(Articles are in reverse chronological order)

meeting, stating the union will stand by the officers. Candage also complains to the City Council about the length of time it took for the city to respond to his public-records request for contract of the person performing the Police Department investigation. Reischmann addresses the council at the end of the meeting, confirming there is an ongoing investigation, and noting that details of an ongoing investigation may not be discussed.

Jan. 12 — A letter from The Brett Law Firm is sent to at least one Orange City police officer. Derek Brett identifies himself as counsel for Melvin; his letter asserts that at least one officer has violated Statute 112, the Police Officers' Bill of Rights. The letter threatens criminal and civil suits against officers who do not retract their negative statements in the original complaint about Melvin. Brett also wants to know who has been speaking to the press. The Beacon is told a similar letter is sent to Orange City Council members.

Jan. 13 — The Beacon calls the city and asks when the newspaper will be allowed to see Melvin's personnel file. Four weeks have elapsed since the original request, and there was never a response from the city regarding the original request.

Jan. 13 — The Beacon sends its second public-records request. The Beacon asks to see: e-mails sent by and to Chief Baskoff and Orange City Police Department Records Custodian Patricia Baskoff (Chief Baskoff's wife), along with e-mails from all sworn police officers, and to all sworn police officers, sent during the first week of January.

Jan. 13 — The Beacon appears at City Hall to examine Melvin's personnel file, and is denied access. We ask, but are not given a reason in writing.

Jan. 14 — The Beacon publishes "OC Cops call in Teamsters."

Jan. 14 — The Beacon is allowed to view a redacted personnel file. A written notice explaining what information was redacted, and why it is exempt, is asked for but not provided.

Jan. 15 — Attorney Virginia Cassady signs an agreement to conduct an investigation of the Orange City Police Department, more than six weeks after the original complaint. (The Beacon doesn't learn of this until Jan. 29, when a copy of the contract with Cassady is provided to the newspaper.) The Beacon asks for, but is not provided with, documentation ending the Jan. 8 agreement with Gilbert Chappell to perform an investigation.

Jan. 15 — The Beacon appears at City Hall three times to view records from the second request — the Police Department e-mails. The Beacon is twice denied access to the records, and on the third visit is allowed to see some redacted e-mails. In writing, the city states certain public records were removed and placed in a "privilege log" that can be reviewed only upon a judge's order.

Jan. 15 — The Beacon sends its third public-records request, asking for any letter from The Brett Law Firm to any city employee. The city denies access to the letter, saying the letter is "a civil matter" and does not involve the city.

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Jan. 18 — The Beacon publishes "OC reeling from PD complaint — union vote planned."

Jan. 19 — The Beacon sends its fourth public-records request for: documentation of the official start date of any investigation, a copy of the contract between the investigating attorney and the City of Orange City, notice of the break of agreement between the city and Gilbert Chappell of Video Verification, and all items that have been previously withheld from other records requests.

Jan. 21 — The Beacon sends its fifth records request, asking for: a copy of any letters from The Brett Law Firm to any members of the Orange City Council, a copy of the city ordinance governing "moonlighting," written approval from the Baskoffs' supervisors giving them permission to have outside employment, and a copy of the e-mail policy for city employees.

Jan. 21 — Someone from the city manager's office cancels the Beacon subscription that is addressed to the city manager's office.

Jan. 21 — The Beacon receives a copy of the city ordinance governing moonlighting, and a copy of a letter address to Patricio Balona of the Daytona Beach News-Journal, explaining why certain public records cannot be released at this time.

Jan. 27 — Melvin enters into a separation agreement that provides for Orange City to pay him \$25,000 in exchange for an agreement not to sue the city. The agreement will end Melvin's employment with the city. Melvin has seven days to back out of the agreement. Orange City's attorneys will confirm the existence of the agreement and the proposed \$25,000 payment, but they will not name the employee involved.

Jan. 27 — Nearly two months have passed since the original complaint, yet The Beacon has yet to view documentation of a start date of any investigation. Interim City Manager Murray says he believes the investigation began on or about Dec. 3.

Jan. 27 — The Beacon sends Murray a list of eight questions, which he forwards to the City Attorney William Reischmann.

Jan. 28 — The Beacon sends its sixth records request, asking for everything that has not been provided thus far, and also asking to view the "privilege log."

Jan. 29 — The Beacon makes its seventh records request, asking to see the Melvin separation agreement, and also requesting correspondence between Melvin and his supervisor during the past week. The request is denied. The information, including the settlement agreement, is said to be part of the active investigation, and therefore exempt.

Jan. 29 — Murray responds to the Jan. 27 list of questions, providing answers to two of eight. He also sends a copy of the city's contract with an attorney for an investigation of the Police Department. The contract was signed Jan. 15. Murray also says "The Brett Law Firm has not sent 'letters' to ORC Councilmembers."

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Jan. 29 — The Beacon, counsel for The Beacon, and city attorneys **Gary Glassman** and William Reischmann confer by phone. The city attorneys maintain all records withheld thus far are exempt from public release under the Police Officers' Bill of Rights, which exempts information "obtained pursuant to" the investigation of a police officer. The city attorneys tell The Beacon that if the separation agreement with the unnamed employee goes into effect Wednesday, Feb. 3, all records will be released, because the investigation will be over.

Feb. 1 — The Beacon publishes "OC deal calls for employee to leave."

Feb. 3 — Melvin takes the separation agreement off the table. The Beacon's request for records is again denied due to the active investigation. It has been nine weeks since the original complaint was filed. Reischmann and **Glassman** cannot speculate about how much longer the investigation might go on.

Feb. 4 — The Beacon publishes "OC officer won't quit; police probe continues."

Feb. 4 — The Beacon files suit against the City of Orange City for violating the public-records law, Florida Statute 119. The City of Orange City has 20 days to respond to the suit.

Feb. 8 — The Beacon publishes "Attorney: Melvin is a good officer."

Feb. 9 — At its regular meeting, the City Council fires Interim City Manager Chester Murray, citing a loss of confidence. Five of the council members say they had not been kept informed about things going on in the city. Mayor Harley Strickland says that he found out about The Beacon's lawsuit by reading the newspapers.

Feb. 9 — Reischmann tells council members the investigation is still ongoing, and he can't give them a date of completion.

Feb. 9 — The Beacon publishes online "Orange City fires its interim manager Chester Murray."

Feb. 10 — Gene Miller is appointed interim city manager by the Orange City Council. He will be paid \$10,000 a month to hold down the fort until a new city manager is hired. The council said it hopes to appoint a city manager by March 1.

Feb. 12 — Gene Miller starts work as interim city manager.

Feb. 19 — Miller publishes first "Friday Letter," announcing the cost of the investigation to-date is \$37,754. Miller also announces the investigation should conclude and be released by March 11.

Feb. 23 — Chief Jeffrey Baskoff verbally announces his intent to retire from the City of Orange City after nearly 26 years.

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Feb. 26 — Gene Miller confirmed Baskoff will retire March 2. Frank Ross, retired chief of police for Titusville, has been named interim police chief. Ross will have a four-month contract. From Florida Statutes Chapter 112.533:

(2)(a) A complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation by the agency of the complaint is confidential and exempt from the provisions of s. 119.07(1) [the open-records law] until the investigation ceases to be active, or until the agency head or the agency head's designee provides written notice to the officer who is the subject of the complaint, either personally or by mail, that the agency has either:

1. Concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or
2. Concluded the investigation with a finding to proceed with disciplinary action or to file charges.

(4) Any person who is a participant in an internal investigation, including the complainant, the subject of the investigation and the subject's legal counsel or a representative of his or her choice, the investigator conducting the investigation, and any witnesses in the investigation, who willfully discloses any information obtained pursuant to the agency's investigation, including, but not limited to, the identity of the officer under investigation, the nature of the questions asked, information revealed, or documents furnished in connection with a confidential internal investigation of an agency, before such complaint, document, action, or proceeding becomes a public record as provided in this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. However, this subsection does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a). Additionally, a sheriff, police chief, or other head of a law enforcement agency, or his or her designee, is not precluded by this section from acknowledging the existence of a complaint and the fact that an investigation is underway.

St. Petersburg Times: Web Edition Articles (FL)
August 29, 2008

Sulphur Springs homeowner has new pipeline problem

Author: Mark Holan

SULPHUR SPRINGS — Here we go again, Dennis Bell thought. Another pipeline, another battle. In November 2004 a sewer line ruptured in front of Bell's house at 7802 N 12th St., flooding his yard and the surrounding neighborhood with 21-million gallons of smelly waste. Bell and two of his neighbors are still trying to collect money for damages in a lawsuit against the city. Bell, a 55-year-old truck driver with three big dogs circling behind his fence, braced for another fight early this week over a leaking water pipeline just a few feet from the 2004 sewer break. He had noticed water trickling through the cracked wall of the storm water catch basin in front of his house early this month. About the same time, he said, he started losing water pressure inside. "I can hardly take a shower," Bell said Monday.

After three visits from water department workers, the city took measures to fix the problem this week. Many of Tampa's water and wastewater pipes are nearly 100 years old. Breaks and ruptures are common. It turns out that the tap water running into the basin came from an old service line to Bell's house. Water department spokesman Elias Franco said new service connections were installed in the neighborhood last fall, but something was awry with how the old line got plugged.

The fix was expected to be completed this week. Crews also have begun a \$19-million project to replace about 5 miles of the wastewater pipe that broke in front of Bell's house in 2004. Crews will install new pipe along 13th Street rather than dig up 12th Street again. Work is expected to be completed by next summer. That could be sooner than the lawsuit filed by Bell, John Frezza and George Anderson is resolved.

Jawdet Rubaii, the Clearwater lawyer representing the neighbors, has said the city failed to do a thorough cleanup and has dragged its feet ever since. Now he wants the city to buy the residents' homes, rather than just pay damages. A judge is expected to rule on Rubaii's amendment soon. Mediation failed to settle the case two years ago. "I get the impression the (City) Council has never heard of this, or they would be outraged," Rubaii said this week. **Gary Glassman**, an assistant city attorney, said the city has met its responsibilities to the residents. "I don't think that means we have to buy their houses," he said.

Bell's house is located along a narrow, wooded section of the Hillsborough River, about a mile east of Interstate 275. The property has a market value of \$142,366, more than double his 2005 assessment after the sewage spill. That means a bigger tax bill. Bell said he hates paying higher taxes for what he describes as poor service and indifference. "I'm fed up with the city of Tampa," he said. "I wouldn't be living here if I wasn't on the river."

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<http://www.tbo.com/news/northeast/2008/jan/02/frustration-comes-tumbling-down-ar-222767/>
January 2, 2008

Frustration Comes Tumbling Down

Author: TBO.com Staff

TAMPA PALMS - When New Tampa's only condemned house was finally demolished in April, the neighbors didn't cheer or toast with champagne. They gathered in a light rain and watched quietly as an excavator tore through eight years of frustration and headaches.

Gary Glassman

Gary Glassman, a member of the city's legal staff, stood under the shelter of a giant oak and watched, too. The case landed on his desk in late 2006, more than two years after Tampa Code Enforcement Director Curtis Lane signed a demolition order. The owner, Scott Burdge, started building the 7,500-square-foot mansion in Tampa Palms' Canterbury subdivision in 1998. After five years, it wasn't halfway done. City inspectors pulled his permits, and Lane condemned it. Burdge used every legal means at his disposal in an effort to stop the demolition. His case is scheduled to go to trial in May - postponed for the fourth time.

Glassman, the third city attorney assigned to the case, said he tried to take a different approach. "I tried to force the issue," he said. "What I tried to do was to convince the city that it had to come down, and if we were wrong, we could deal with the consequences when the case got to trial. It was a more aggressive approach." When Burdge learned the city had scheduled the demolition, his lawyer filed a motion for an emergency injunction to stop it. "I didn't mind," **Glassman** said. "I wanted to get this issue before the court. There was an opportunity there for Burdge to stop us, but the judge didn't grant the injunction."

As he stood under that oak tree in the rain, **Glassman** felt the wave of relief pass over the neighbors. "I had not lived with this for six to eight years like they did," he said. "I felt relief for them that this was finally over. I said to myself, 'Something good came out of the justice system today.'"

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<http://www.tbo.com/south-tampa/city-fights-permit-suit-219843>
October 27, 2007

City Fights Permit Suit

Author: Kathy Steele

SEMINOLE HEIGHTS - The city is seeking to dismiss a lawsuit over its approval of a day care center near an apartment complex that rents to sex offenders. The apartments' owner, Christian Stover, sued in August after the city council approved a permit for the day care center at John Calvin Presbyterian Church. Stover claims he will lose money if the day care opens and he can no longer rent to sex offenders. He is seeking more than \$15,000 in damages and revocation of the permit, the lawsuit states. Seven sex offenders, including one designated as a sex predator, were living in the apartment complex as of Wednesday, said state Department of Corrections spokeswoman Jo Ellen Rackleff. State law restricts sex offenders from living near day care centers but not churches. The city says Stover can continue to rent the apartments, just not to sex offenders. No one is taking Stover's property or his ability to make money, Assistant City Attorney **Gary Glassman** said.

Stover's attorney, Luke Lirot, said his client isn't looking to stop the day care center. 'We're hoping somehow we can come up with some kind of compromise to reach that makes everyone happy,' Lirot said this week. A court date has not been set, officials said. Lirot said he wants to discuss a solution with city and church officials. 'It's a complicated issue,' Lirot said. In his lawsuit and during council hearings, Stover said he bought the apartment complex, 6601 N. Nebraska Ave., with the belief that it met state requirements for housing sex offenders who have completed their prison sentences. He said he was not aware of the day care plans. The church is not a party to the lawsuit, but the Rev. Earl Smith said the lawsuit is being monitored. Construction is anticipated to start in about 30 days, Smith said.

During the council hearings, church officials said they did not understand how Stover could be unaware of the project. Public notices about the August hearing were posted on church property, 6501 N. Nebraska Ave. The church plans to remodel a vacant building on its campus for the day care. About 50 children would attend, most receiving church scholarships. Once the day care opens, a 1,000-foot restriction can be applied to sex offenders whose victims were younger than 16. Smith said he believes Stover would have to remove any such offenders from the complex. Rackleff said the state cannot prohibit a sex offender from living at the complex. 'Once the day care opens we will no longer approve this as a place to live,' she said.

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Orlando Sentinel
February 8, 2006

Judge: Rabbi may sue Orange for damages

Author: Rich Mckay

A federal judge in Orlando opened the legal doors last week for Rabbi Joseph Konikov to sue Orange County for damages over the county's four-year battle to keep him from conducting religious services in his home. A judge ruled Jan. 20 that the county's ordinance was vague and unfairly singled out religious services. That ended the fight between the rabbi and the county over complaints about parking, traffic and noise in his Sand Lake Hills neighborhood.

But although the ruling was a victory for the rabbi, it also, according to his attorneys, tied his hands against pursuing damages against the county. "Basically, that means that this case is over and everyone goes home," said attorney Rick Nelson, general counsel of the American Liberties Institute. "We said, 'Wait a minute, there are things here that haven't been settled yet,'" Nelson said. "There's unfinished business."

On Friday, U.S. District Judge John Antoon II amended his ruling, allowing Konikov and his attorneys to seek damages. Nelson would not say how much Konikov would pursue in a lawsuit, but he said the rabbi and his family were put under financial distress from fighting the case in court and from the \$50,000 in liens the county imposed on their home. Assistant County Attorney **Gary Glassman** could not be reached for comment, but he earlier said the case was never about religion, that the county was responding to neighborhood complaints.

Drugfree.org (<http://www.drugfree.org/join-together/fla-faith-based-treatment-program-opposed/>)
August 5, 2003

Fla. Faith-Based Treatment Program Opposed

Author: Join Together Staff

Officials in Orange County, Fla., want to shut down a faith-based addiction-treatment program because residents in the neighborhood are complaining about its growth, WFTV reported Aug. 4. For the past decade, the Open Homes Fellowship has been operating out of a Central Park Avenue location in Orange County. The program uses the principles of the Christian faith to help individuals addicted to drugs. “Our program introduces the men and helps them get a relationship with Jesus Christ,” said Wes Carlson, administrator of Open Homes Fellowship. But residents in the neighborhood said the program is growing beyond its main building and classrooms. Across the street, the Open Homes Fellowship is using several duplexes for those recovering from their addiction.

The county is supporting residents, saying the program is violating zoning laws. The neighborhood is zoned residential, which means a church or an addiction-treatment facility would have to apply for a special exception. “Zoning is the county's way of trying to keep neighborhoods as neighborhoods,” said Assistant County Attorney **Gary Glassman**. “You have to really balance both interests — the interests of those who are recovering with those who live in the neighborhood and say, 'We don't want that here.'” The Open Homes Fellowship was denied a special exception from the county. A federal judge will now decide if the facility can stay open.

The Miami Herald
April 21, 2002

ORLANDO RABBI FIGHTING FINES FOR HOLDING SERVICES IN HOME

Author: MIKE SCHNEIDER

The sparsely decorated living room of Rabbi Yoseph Konikov's house doesn't look much like a synagogue. A long table is covered with brownies and cans of soda for visitors who come to pray and study. On the wall is an oversized photo of Rabbi Menachem Schneerson, the deceased leader of the Chabad-Lubavitch movement of ultra-religious Jews who try to bring secular Jews back to ritual practice.

But code enforcement officials last month concluded that Konikov is illegally operating a synagogue in a residential area. After numerous complaints from neighbors about cars parked around Konikov's house, Orange County's Code Enforcement Board gave him 60 days to stop holding prayer services or face a \$50 a day fine. Konikov is fighting back with a federal lawsuit that accuses the county of violating his religious rights. "Do I give up my faith or just move out of town?" said the 27-year-old Konikov. After renting the house for almost two years, Konikov bought it last month and lives there with his wife and two preschool-age children. His income comes from the Chabad headquarters, which has established a worldwide network of outreach institutions.

CHABAD HOUSES

The Chabad movement began 250 years ago in Russia. Its leaders expound Jewish mysticism and preach about the all-encompassing nature of Jewish life. One of the tenets of the modern movement, which was led by Schneerson, was for followers to call their homes Chabad houses. "It's not separate from their personal lives," Konikov said. "Every room is a mini-synagogue." Konikov is reluctant to say there may be other motives behind his Sand Lake Hills neighbors' complaints, but some of his regular visitors don't hesitate. "To me, it's because we're Jews that they're picking on us. I don't see it any other way, shape or form," said Pearl Stolzer, 63, who attended a recent Wednesday night study session with her husband. "We're not hurting anybody."

IT'S THE ZONING

But residents of this middle-class neighborhood of ranch houses near the sprawling Universal Studios theme park are adamant that their opposition has nothing to do with religion and everything to do with zoning. That didn't stop an outside hate group - not neighbors - from distributing anti-Semitic literature in the neighborhood last year. "It's a misuse of land. It's not a religious issue," said Mike Campbell, who lives down the street from Konikov. "We've all invested a lot of money in our homes, but we don't want to seem like a bunch of ranting neighbors." Konikov could apply for a special exemption, but that would cost more than \$900 with no guarantee of getting approval, says his attorney, John Stemberger. "Why should any

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family ask permission from the government to gather and worship in their home?" Stemberger said.

If the problem is about parking, the county could issue citations, tow cars or draft an ordinance dealing with traffic and parking, he says. "They don't have any business regulating the content of speech and the nature of assembly in a house," Stemberger said. "If they were meeting for a secular purpose - say Monday Night Football - there's nothing in the county code that could stop them from meeting." Konikov's neighbors think otherwise. The Sand Lake Hills Homeowners Association newsletter last month urged neighbors to sign a petition urging the Code Enforcement Board to take action. "If Orange County allows the nonresidential use of the property . . . a dangerous precedent will be set," the newsletter said. "How would you like to have a high-traffic, commercial business run out of your next-door neighbor's home?"

VISITORS COUNTED

The home is used for more than just a place for people to pray, County Assistant Attorney **Gary Glassman** told the code board. Konikov's address is listed on a website as the location for the Chabad of South Orlando. The site lists times for services on Monday, Thursday, Friday and Saturday and times for study and Hebrew classes on Sunday and Wednesday. Code enforcement officers randomly selected 49 days over a seven-month period and counted 373 vehicles parked around the home. They also counted 510 visitors to the home during that period. "We're not just talking about a simple prayer service in someone's home," **Glassman** said. "The Internet websites, the brochures, the traffic, the people, clearly indicate that this is not just an occasional thing that occurs."

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Ledger, The (Lakeland, FL)
August 22, 2000

2 POLK DEPUTIES FILE BIAS COMPLAINTS; THEY ALLEGE LESS-QUALIFIED WHITES WERE PROMOTED OVER THEM DUE TO RACE.

Author: SAM CARDINALE

BARTOW -- Two of the highest-ranking minority deputies in the Polk County Sheriff's Office's Law Enforcement Division have filed discrimination complaints, alleging less-qualified whites were promoted over them. Capt. Ken Grant, a 27-year employee, and Lt. David Smith, a 32-year employee, filed the complaints with the Equal Employment Opportunity Commission and the Florida Commission of Human Rights on Aug. 4. "Blacks are not treated the same as whites," Smith said. "It hurts, and you feel second-hand." Sheriff's Office officials say they have not seen the complaints and declined to comment Monday, according to sheriff's spokesman Scott Wilder. The Sheriff's Office already faces complaints of sexual discrimination.

Three women deputies have filed federal discrimination lawsuits based on sex against Sheriff Lawrence W. Crow Jr. and the Sheriff's Office after the EEOC dismissed their complaints. Grant and Smith said in an interview Monday that they are not the only minorities passed over for promotion by Crow. Statistics show that few blacks are in the law enforcement division, with even fewer being promoted. Of the agency's 354 deputies, only 17, or 4.8 percent, are black. The county's black population is 15.6 percent.

Grant is the highest-ranking minority in the law enforcement division, where 17 percent of the supervisors are minorities or women. No minorities or women have been promoted above captain in that division. Crow's administrators said in previous interviews the agency has made great strides in hiring and promoting minorities and women since Crow became sheriff in 1987, and that the minority-supervisory ratio is higher agency wide at 31 percent. But Grant and Smith point to their years of service -- two of the longest-working deputies at the agency -- and the fact that white men without the same education or law enforcement experience were promoted above them. Since Smith was promoted to lieutenant in 1988, he said, 11 white men, some of whom he supervised, were promoted past him to captain and three to major. Grant, who has been a captain since 1987, is upset because Crow said in May he wouldn't promote Grant to major because Grant doesn't have a four-year college degree. Both Grant and Smith earned two-year associate's degrees years ago.

Yet Crow has promoted to the rank of major four white men with equal or less education than Grant and Smith, including one who didn't have a degree. "I was very much hurt," Grant said. "He's trying to tell me that my 27 years don't count for anything. I was loyal and a dedicated worker at the agency. I feel that they had to be prejudiced toward me some way, to minorities, because minorities are very slowly promoted in this agency."

Larry Hardaway, one of two attorneys representing the two men, said Grant should have been promoted. "He was forward in his commitment and loyalty to the sheriff as he represented the sheriff in his own (minority) community," Hardaway said. "Then to be looked over, and

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specifically for the sheriff to say that he was not promoted because he didn't have any appropriate educational credentials, really hurt."

Grant and Smith said they want to see more diversity -- to include the promotion of minorities and women to higher ranks -- and less "institutional discrimination" at the Sheriff's Office. Sarasota attorney **Gary Glassman**, the other attorney representing the two men, said neither Grant nor Smith want anything handed to them. "Nobody's asking for preferences," **Glassman** said. "What people are asking for is a level playing field. Go by the guidelines and the standards that you set, and apply them equally to everybody. Grant and Smith said they will file federal lawsuits if the EEOC dismisses their complaint. "The evidence we're seeing is that it's not a level playing field," **Glassman** said. "That's why we think a lawsuit is necessary, to encourage the Sheriff's Office to level the playing field. Don't say you need a four-year degree and apply it to African American, but not apply it to a Caucasian."

Ledger, The (Lakeland, FL)
May 28, 2000

FOUR FEMALE POLK DEPUTIES PLAN DISCRIMINATION SUITS

Author: SAM CARDINALE

BARTOW -- Four female deputies who say they are treated like "second-class citizens" by male supervisors at the Sheriff's Office say enough is enough. Their attorney, **Gary Glassman** of Sarasota, says he will file federal discrimination lawsuits against Sheriff Lawrence W. Crow Jr. on behalf of two of the deputies within the next 90 days.

Glassman said sometime this month he will send a letter, as required by law, notifying the Sheriff's Office that the other deputies plan to sue the agency within six months. **Glassman** said the deputies hired him because they think Crow and his top administrators won't promote women and that the Sheriff's Office aims improper disciplinary action toward women. "They do believe women are just second-class citizens in the department," **Glassman** said. "The general feeling is they're not getting the same chance as men. "There is a perception that there is a good-ol'-boy network," **Glassman** said. "Women have to work twice as hard to be considered half as good. It gets frustrating." Sheriff's officials deny that. "The Sheriff's Office has an outstanding record promoting quality women, men and minorities, and the facts show that," said sheriff's spokesman Scott Wilder. "His allegations are totally unsupported by the facts."

Wilder said **Glassman** was attempting to try his case in the media by talking to The Ledger. The Sheriff's Office has received one notice letter of a pending lawsuit -- that coming from Deputy Ann Cash in January, Wilder said. In addition to Cash, the other deputies planning to sue are Deanna Warren, Amy Thompson and Sgt. Mary Martin. They have filed federal complaints against the Sheriff's Office with the Equal Employment Opportunity Commission, alleging sexual discrimination, **Glassman** said. Wilder said the complaints filed by Cash and Thompson have been dismissed by EEOC. The federal agency allows people who file complaints to file a federal lawsuit within 90 days of the dismissal. EEOC officials would not comment. Cash and Warren complained to sheriff's officials last year that they transferred out of homicide investigations after being harassed by sheriff's Col. Grady Judd and Capt. W.J. Martin.

Cash and Warren say Judd threatened their jobs. His hostility stems from the investigation of the death of Haines City police Officer Christopher Horner, they say. Judd denied threatening anyone. Horner was found shot to death March 3, 1998, in a cemetery north of Haines City. Officials with the Sheriff's Office, the Florida Department of Law Enforcement and the Medical Examiner's Office say Horner was slain. But Cash, one of the detectives who thinks Horner committed suicide, said she and Warren were singled out for punishment because of their views regarding Horner's death. They were angered, **Glassman** said, because Crow and other sheriff's officials ignored their complaints alleging harassment. "We were told we were idiots, and we were told we were stupid," Cash said. "They have not treated me the same they would a male."

Cash, who had an exemplary record at the Sheriff's Office as a deputy, a detective and then a homicide investigator, was accused by Capt. Martin of mishandling cases. Sheriff's Col. Al Lang

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determined she did nothing wrong. Cash alleges three sergeants, under the direction of Capt. Martin, tried to destroy her credibility by saying she mishandled the cases. "None of the evidence and witness statements supported their allegations against me," she said. "They didn't even support each other, and some of them were actually caught lying during the interviews. "Once I was found innocent, the administration came to me and said it was a matter of perception," Cash said. "I want vindication. They refused to give it to me. I'll go as far as I have to to get it." Cash says it's that kind of treatment that has destroyed deputy morale in the Sheriff's Office. Neither Warren nor Thompson returned phone messages for this article.

Glassman said Sgt. Mary Martin, who is not related to Capt. W.J. Martin, has also been singled out for improper disciplinary action. "Mary thinks she's been targeted for disciplinary action predominantly because she's an outspoken woman," **Glassman** said. "She feels like she has a target on her back." Again, Wilder, the sheriff's spokesman, disagreed. "Nothing can be further from the truth," he said. "Mr. **Glassman** is engaging in irresponsible rhetoric." Sgt. Martin did not return phone messages.

Glassman said three male deputies have been to see him about unfair treatment by supervisors at the Sheriff's Office. But he said their complaints don't revolve around gender discrimination. Cash, who has worked on some of the highest-profile homicide cases in the county, such as the shooting of Winter Haven police Officer Johnnie N. Patterson Jr. and the shooting rampage by Haines City teen-agers in April 1998, said she was forced into patrol in December 1998 because of the treatment. "This has devastated me," Cash said. "They took a career I had been building all my adult life and took it away with a stroke of a pen. "If it wasn't for the support I got from people here, I wouldn't have been strong enough to stick with it. There are a lot of good people here. But there are just a few at the core that make it difficult for the rest of us."

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Ledger, The (Lakeland, FL)
September 22, 1995

3 POLK MEN PART OF SUIT VS. GTE

Author: Lynn N. Duke

TAMPA -- Three Polk County men are part of an age discrimination suit filed this week in federal court against GTE Florida Inc. The suit claims that the Polk County men, along with 11 other plaintiffs, were terminated last year because of their age as part of a reduction in personnel by GTE.

Gary C. Broxton, 43, Randell D. Lewis, 47, and Harry W. Miller Jr., 48, all of Lakeland, are seeking back and forward pay, restoration to their former positions and unspecified punitive damages. "GTE, like so many other companies, is going through a reduction in size," said **Gary Glassman**, a Sarasota attorney representing the 14 plaintiffs. "Nobody can tell them they can't do that, but what we are questioning is what are the criteria and what are the factors used in making that decision."

A GTE spokesman said the company has not been served with the lawsuit but traditionally does not comment on pending litigation. The suit, which was filed Sept. 20 in U.S. District Court in Tampa, claims that instead of terminating positions based on an employee's seniority, GTE arbitrarily ranked people within job categories on issues unrelated to job performance, one of which was age. All of the people in the suit, and almost all of the people who were dismissed, are over 40. Each of the 14 plaintiffs previously filed age discrimination suits with the Equal Employment Opportunity Commission. The suit also seeks damages for professional embarrassment, personal humiliation and wrongful interference with pension rights. GTE employees become eligible for their pensions once their age plus years of service equal 76 or more. The 14 plaintiffs were within three to 12 years of that eligibility when they were fired last December.

Glassman said his clients got severance packages from GTE, but that compensation did not come close to what they would have earned in pension and benefits if they had worked until they were eligible. **Glassman** would not speculate what those pension benefits would be worth but said an economist would make a projection as the case proceeds. A separate suit alleging sex and age discrimination also was filed this week against GTE in federal court by a 44-year-old Pasco County woman, Andrea D. Lee.

Other plaintiffs in the suit are: Alan D. Brooks, 44, Seminole; Michael G. Brustad, 52, Sarasota; Frank M. Corso, 47, Sarasota; Jay K. Crawford, St. Petersburg; Shelley D. Hedgepath, 43, Riverview; Arthur S. Keal, 51, Sarasota; James L. McKay, 47, Bradenton; Myron M. Milligan Jr., 47, Denver; Nelson G. Peeples, 45, Zephyrhills; Stephen E. Wild, 48, Sarasota; Harvey T. Wilton, 45, Sarasota.

The Tampa Tribune
July 4, 1992

Parents group loses court bid to put teacher 'bumping' practice on hold

Author: KATHLEEN BEEMAN

Circuit Court Judge Scott Brownell on Friday denied a parent group's request to delay the Sarasota School Board policy that allows teachers whose positions have been cut to displace others with less seniority. Based on the decision, about 100 teachers whose positions have been eliminated will begin the shuffling system known as "bumping." Brownell said he could not justify stalling the bumping because the group failed to demonstrate a likelihood it eventually will win the case. But **Gary Glassman**, attorney for the grass-roots Parents for Quality Education Inc., a coalition of about 100 parents and teachers, said the bumping policy violates the intent of the Florida Constitution and disrupts education in the county. "We're disappointed with the judge's decision today," said **Glassman**, who was barred from calling eight witnesses to testify. "But today's judgment is only one part of the lawsuit. We're convinced that when the judge does receive our testimony, he will rule in our favor."

Glassman said the seniority-driven system harms students by replacing experienced teachers with others who may be unfamiliar with the material. The bumping process, negotiated between the school board and the teachers union, was used for the first time last year when state budget cuts forced the school board to cut about 70 positions. Attorneys for the school board and the Sarasota Classified/Teachers Association argued the bumping provision is a policy decision that conforms with Florida statutes. School board attorney Lamar Matthews said the parents' group would have to pay \$4 million to keep teachers in their current positions if the judge granted their motion. "There is no constitutional right to pick your teacher, like your teacher or have the best teacher," school board co-counsel Arthur Hardy said. Placing teachers throughout the school district is a decision based on teacher qualifications and seniority, he said. That should be left to the teachers and school officials, and kept out of the courts.

Glassman conceded there is no legal precedent allowing parents to ensure a teacher is adequate, but he urged the judge to set one. "The priority, judge, is very simply the students, the students, the students, and that's what this suit is about," **Glassman** said.

Research compiled by: Amanda Kuhl
 Colin Baenziger & Associates

City Commission Special Meeting, 1:30 pm

Meeting Date: 03/10/2016

Re:

Information

SUBJECT:

John S. Turner

Attachments

Turner

Form Review

Form Started By: Linda Cox

Final Approval Date: 03/08/2016

Started On: 03/08/2016 11:48 AM

COLIN BAENZIGER & ASSOCIATES
EXECUTIVE RECRUITING

Section 6

John S. Turner

*Fort Pierce City Attorney
Candidate Report*

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CB&A REFERENCE NOTES	15
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Resume

JOHN S. TURNER, ESQ., B.C.S.
P.O. Box 670
Fort Myers, FL 33902
239-691-0575
floridafirm@embarqmail.com

Senior-level trial attorney with excellent qualifications and experience in all areas of trials and appeals of civil cases in State and Federal courts. Proven ability to work under pressure with attention to detail and meeting critical deadlines to provide the highest quality legal representation possible to the client and its departments and employees. Highly developed skills in analyzing/interpreting issues and problem solving. Board Certified by The Florida Bar in City, County, and Local Government Law.

CAREER HIGHLIGHTS:

1. Represented local government in \$24 million civil rights and inverse condemnation claims by developer in Federal court and on appeal, resulting in favorable verdict and award of attorney's fees and costs for the client.
2. Successfully defended local government in federal courts involving the following issues: Family Medical Leave Act, Title VII claims, ADEA claims, ADA claims, FAA claims, violations of First Amendment free speech, Fourteenth Amendment due process and equal protection claims, inverse condemnation and civil rights claims, Telecommunications Act claims, and abandonment proceeding before Surface Transportation Board.
3. Initiated in-house defense of Workers' Compensation claims by local government saving substantial amounts on outside counsel costs and fees.
4. Successfully represented local government in attempts to stop construction of bridge projects.
5. Defended local government in attempt to overturn adoption of County Charter.
6. Represented local government in personal injury and property damage claims under the sovereign immunity provisions of section 768.28, Fla. Stat. saving substantial amounts on outside counsel costs and fees.
7. Handled numerous eminent domain and Bert Harris claims and trials for local government projects including Department of Transportation, Utilities, Natural Resources, and County Lands.

John S. Turner
Page 2

PROFESSIONAL EXPERIENCES:

Private practice since 2015 in the areas of civil trial and city, county, and local government law, including eminent domain, inverse condemnation, Bert Harris claims, personal injury and employment law.

Associate attorney with the firm of Kevin F. Jursinski & Associates, 15701 S. Tamiami Trail, Fort Myers, FL, 33908, in 2015, with primary emphasis in the areas of construction defects and mortgage foreclosure defense.

Senior Assistant and Chief of Litigation Section in the Lee County Attorney's Office, P.O. Box 398, 2115 Second Street, Fort Myers, FL, 33902, from 1991 to 2015. Responsible for trial and appeal of federal and state actions involving eminent domain, inverse condemnation, due process takings, Bert Harris claims, personal injury defense, workers' compensation defense, employment law, contract disputes, construction actions, constitutional law, civil rights claims, public records complaints, zoning and land use issues and actions. Supervised and trained trial attorneys, paralegals, and legal assistants.

Prior to moving to Florida in 1991, I was in private law practice in Tulsa, Oklahoma, and also served as a Municipal Court Judge in Tulsa, Oklahoma.

EDUCATION:

Juris Doctorate, University of Tulsa College of Law, Tulsa, OK; B.A. in Business Administration, University of Tulsa.

DESIGNATIONS/AFFILIATIONS:

Certified by The Florida Bar in City, County, and Local Government Law.

AV rated by Martindale-Hubbell.

Circuit Court Mediator.

Oklahoma Bar Association.

Florida Bar Association.

Member of the U.S. Supreme Court, Eleventh Circuit Court of Appeals, United States District Court for Middle District of Florida.

Section 6

Candidate Introduction

JOHN S. TURNER

I. INTRODUCTION

This candidate for the position of City Attorney for the City of Fort Pierce is an experienced and well-qualified attorney in all areas of local government law, and is certified by the Florida Bar in City, County, and Local Government Law. It is the goal of this applicant to provide the highest quality legal representation possible to the City of Fort Pierce, its departments and employees in an efficient and timely manner, and to implement the policies as directed by the City Commission to the best of his ability in a professional manner.

II. EXPERIENCE

As a Senior Assistant and Chief of the Trial Section for the Lee County Attorney's Office, I was responsible for the trial and appeal of state and federal claims involving eminent domain, inverse condemnation, regulatory and due process takings claims, land use and zoning disputes, personal injury defense for County departments, workers' compensation, Title VII, ADA, ADEA, FMLA, civil rights claims, and contract preparation and litigation. In addition to representing the County in litigation matters, I attended meetings of the Board of County Commissioners, advised County Commissioners and staff on the Sunshine and Public Records Laws, conducted Chp.164 meetings to resolve disputes with other governmental agencies to avoid litigation, advised Board and staff on pending litigation for the purposes of settlement and litigation strategy, provided input and advice on ordinances and resolutions, zoning actions, code enforcement cases, quasi-judicial proceedings, and handled writs of certiorari in Circuit Court and Comprehensive Plan challenges.

While in the County Attorney's Office I supervised attorneys in the Trial Section, made hiring decisions and recommendations, prepared annual evaluations and reviews, trained and instructed staff and paralegals on legal research, trial strategy, case outlines, witness preparation, exhibit files and discovery. It was our goal to be totally prepared in every case so the County Commissioners and staff could be fully advised as to the most appropriate course of action. Each claim was analyzed with the risk-benefit ratio in mind. Only cases or defenses that had a reasonable assurance of success would be pursued.

Some specific examples of litigation matters that demonstrate my experience and qualifications handling local government issues, include the following:

- Successfully defended EMS in a Federal jury trial for alleged violation of the Family Medical Leave Act.
- Successfully represented DOT in an eminent domain jury trial for roadway improvement project and in appeal to Second District Court of Appeal.

JOHN S. TURNER

- Lead counsel in over a dozen personal injury jury trials against various County departments to verdict, including over six defendant's verdicts.
- Lead counsel for the County in hundreds of eminent domain cases filed and prosecuted in Circuit Court, including 17 cases to jury verdict.
- Lead counsel for workers' compensation cases brought against the County in the Office of the Judges of Compensation Claims.
- Assisted in defense of a constitutional challenge to County's impact fee ordinance including appeal to Second District Court of Appeal.
- Successfully represented Port Authority in defense of claims by taxicab operators and courtesy vehicle companies for breach of contract, substantive due process and equal protection claims in federal and state courts.
- Lead counsel in defense of state whistle-blower claims filed by seven employees who were terminated after creating a hostile workplace.
- Defended and settled claims in federal court by property owner for illegal destruction of property from unconstitutional building code in violation of substantive and procedural due process.
- Successfully defended water service franchise agreement in action by municipality concerning coverage terms including appeal to Second District Court of Appeal.
- Defended County in Title III ADA claims for lack of accommodations in 11 public parks and buildings in federal court. Settled claims but successfully argued that County was not liable for plaintiff's attorneys fees and costs.
- Successfully defended County in federal and state courts from inverse condemnation claim involving a road construction project for taking of access, injunctive relief, denial of due process.
- Successfully defended in state court breach of contract and injunctive relief claims by municipality to prevent construction of new bridges and a causeway.
- Successfully defended County in federal court and on appeal to the Eleventh Circuit Court of Appeals and the U.S. Supreme Court on a claim by property owner that special assessment violated its constitutional rights.

- Successfully defended in federal court and on appeal to Eleventh Circuit Court of Appeals claims for over \$16 million by a telecommunications company for violation of the Telecommunications Act, substantive and procedural due process violations.
- Successfully tried eminent domain action for property necessary for expansion of airport. Property owner demanded \$1 million but jury awarded \$240,000.
- Successfully defended in federal court two claims of retaliation for hostile work place against County Manager. Third claim for First Amendment violation was settled after mistrial.
- Successfully tried age discrimination claim in federal court wherein the Plaintiff claimed damages of \$600,000.
- Successfully tried disability claim in federal court under ADA against claim for damages of \$400,000.
- Successfully tried race discrimination claim in federal court against claim for damages of \$400,000.
- Prosecuted action against consultant and designer of supporting structure for 16" waterline installed under a bridge. Settled claim for \$95,000.
- Successfully defended in state court and on appeal to Second District Court of Appeal a challenge to adoption of county charter.
- Assisted in trial and defense of \$24 million inverse condemnation and civil rights claim in the federal courts (seven different judges) and on appeal to Eleventh Circuit Court of Appeals. Obtained judgment for costs and attorneys' fees of \$600,000 and collected \$320,000 that was returned to the county.
- Defended Bert Harris claims for FEMA floodway maps and for inverse condemnation.
- Defended claims by property owners for regulatory takings for failure to rezone from residential to commercial and for mining operations.

JOHN S. TURNER

III. EDUCATION

Postgraduate: Juris Doctorate, University of Tulsa College of Law, Tulsa, OK.

Undergraduate: B.S. in Business Administration, University of Tulsa, Tulsa, OK, and University of Arkansas, Fayetteville, AR.

IV. EMPLOYMENT

Currently in private practice in Fort Myers since April of 2015, representing clients in the areas civil trial, local government law, and related land use issues. Prior to moving to Florida in 1991 and accepting a position with the Lee County Attorney's Office, I was in private practice in Tulsa, Oklahoma, with focus in civil litigation, business disputes, real estate development, zoning, real estate law, and business franchising. I also served as a full-time Municipal Court Judge for the City of Tulsa handling traffic, misdemeanor, and code violation cases, and conducting jury and non-jury trials.

V. ACTION PLAN

If the City Commission should select this candidate as its new City Attorney, I would immediately address the following matters:

- Obtain direction from City Commission as to its goals, expectations, and objectives with respect to the City Attorney's office.
- Prepare a plan of action to transition from the current outside firm to the new city attorney to ensure that the City's legal interests are properly protected.
- Outline the requirements for the office of the new city attorney including staff, office facilities, and budget.
- Schedule meetings with all department directors to discuss needs and be included in staff meetings to give legal direction in the areas of public records laws, sunshine laws, lines of communications and expectations.
- Meet with citizens' board members to establish open lines of communication.

The important job skills that I can offer to the City Commission for this important position are: (1) to establish an open, clear and direct line of communication; (2) implement organizational controls to keep track of tasks, ensure that deadlines are met and advise the

JOHN S. TURNER

Commission as to status of all matters to avoid surprises; and (3) apply proven and objective problem solving techniques.

VI. Recent Salary

At the time of resignation from the county attorney's office, my compensation was approximately \$150,000.00 per year.

CB&A Background Checks

**Background Check Summary for
JOHN S. TURNER**

Criminal Records Checks:

Nationwide Criminal Records Search No Record Found

County
 Lee County, FL No Record Found

Federal
 Florida No Record Found

Civil Records Checks:

County
 Lee County, FL No Record Found

Federal
 Florida No Record Found

Motor Vehicle
 Florida No Record Found

Credit Excellent

Bankruptcy No Record Found

Education [Results Pending](#)

Employment Confirmed

Bar Certification/License Member in Good Standing
 Bar #869570

**Background Check Summary for
JOHN S. TURNER**

THE FLORIDA BAR

ABOUT THE BAR
NEWS & EVENTS
FOR THE PUBLIC

MEMBER SERVICES
LOG IN
FIND A LAWYER

THE FLORIDA BAR
Find A Lawyer
Profile

John Stanley Turner

Member in Good Standing

Bar Number: 869570

Mail Address: PO Box 670
Fort Myers, FL 33902-0670
United States
Office: 239-337-2345
Cell: 239-691-0575

Email: flordafirm@embarqmail.com

Personal Bar URL: www.floridabar.org/mybarprofile/869570

vCard:  ?

County: Lee

Circuit: 20

Admitted: 11/26/1990

10-Year Discipline History: None

Law School: University of Tulsa College of Law

Board Certifications:	Area	Year
	City, County and Local Government Law	1997

Eligible to Practice Law in Florida



The Find a Lawyer directory is provided as a public service. The Florida Bar maintains limited basic information about attorneys licensed to practice in the state (e.g., name, address, year of birth, gender, law schools attended, admission year). However, through this directory The Florida Bar allows individual attorneys the opportunity to provide for public information certain expanded personal and professional data. It is the attorney's responsibility to routinely review and update those expanded listings. The information contained in those expanded listings is presented by the Bar "as is" with no warranty of any kind, express or implied. The Florida Bar, its Board of Governors, employees, and agents thereof are not responsible for the accuracy of that additional data. Publication of attorneys' contact information within this listing should not be construed as their consent to receive unsolicited communications in any form. Certain unauthorized uses of this data may result in civil or criminal penalties. The Find a Lawyer directory is not a lawyer referral service.



**Background Check Summary for
JOHN S. TURNER
Personal Disclosure**

Personal Disclosure Questionnaire

Name of Applicant: John S. Turner

The following questions are designed so that we will be able to make full disclosure to our client concerning your background. Please answer them honestly. Cutting corners or misrepresenting your past will result in you being eliminated from all further searches conducted by this firm. We understand that frivolous charges are sometimes made and that charges do not mean you were guilty. We also understand that you may have been wronged and needed to seek compensation. The bottom line is that we want to be certain that our client is fully informed. If you have any questions, please contact us for clarification.

1. Have you ever been charged or convicted of a felony?
Yes No
2. Have you ever been accused of or have been involved in a domestic violence or abuse incident?
Yes No
3. Have you ever declared bankruptcy, or been an owner in a business that did so?
Yes No
4. Have you ever been the subject of a civil rights violation complaint that was investigated or resulted in a lawsuit?
Yes No
5. Have you ever been the subject of a sexual harassment complaint that was investigated or resulted in a lawsuit?
Yes No
6. Have you ever been convicted of driving while intoxicated?
Yes No
7. Have you ever sued a current or former employer?
Yes No
8. Do you have a personal My Space, Face Book or other type of Web Page?
Yes No
9. Do you have a personal Twitter Account?
Yes No
10. Is there anything else in your background that, if made public, would cause you, our client or our firm embarrassment if it came to light through the press or any other mechanism?
Yes No
11. Please provide a list of any lawsuits in which you are or have been a party either as plaintiff or defendant.

Attested to: 
Signature of Applicant

Please email this form via PDF DOCUMENT to _____ or via fax to _____
(888) 539-6531

(Note: Please be sure to sign the form with your actual signature if you are sending Fax or PDF Document)

CB&A Reference Notes

Reference Notes
John Turner

Mike Figueroa – Risk Manager, Lee County, FL 239-533-2221

Mr. Figueroa first met Mr. Turner in 2004. They worked together on various legal issues until Mr. Turner left in 2015. They have had no further contact since then.

Mr. Figueroa and Mr. Turner interacted on a daily basis during the time they were both employed at the County. Mr. Turner was the attorney of record for all of the personal injury and worker's compensation cases. He was a fountain of knowledge in regards to legal issues, however, if he did not know an answer off the top of his head he researched it and quickly followed up. He ensured to take his time and go over all aspects of an issue to ensure the best outcome for the County.

Mr. Turner was always responsive and operated with an open door policy. He gave sound legal advice, however, when working with Mr. Figueroa they both came to the mediation table with input on how to proceed in regards to each case. Even though they did not always agree on issues, Mr. Turner made decisions based on the best interest of the County ensuring that he represented his client well.

Mr. Figueroa is aware of several circumstances where the elected body did not follow Mr. Turner's legal advice and went in a different direction. Unfortunately, he is unaware of the outcomes as most of those issues were discussed during board meetings where he was not present.

Mr. Turner was good at keeping Mr. Figueroa informed of what was happening in regards to their mutual cases. He was excellent at finding solutions for problems and had a good command of many areas of the law including; contracts, land use, and labor and personnel issues.

Mr. Figueroa is not aware of Mr. Turner being involved in anything controversial that was not part of his job description as a County Attorney. He knows of nothing in his background that would be construed as embarrassing if the press were to investigate. He is uncertain why he left the County, but suspects he was a casualty of the new Administration. He would absolutely hire him as a City or County Attorney because of his wealth of knowledge and experience. It was a pleasure working with him.

Words or phrases used to describe John Turner:

- Interesting,
- Knowledgeable,
- Confident, and
- Pleasure to work with.

Reference Notes
John Turner

Strengths: Extremely knowledgeable in several aspects of the law and operates with the best interest of his client in mind.

Weaknesses: None identified.

John J. Renner – Chief of Trial Section, Lee County Attorney’s Office, Lee County, FL
239-560-3915

Mr. Renner first met Mr. Turner in 1991. He became Mr. Turner’s direct supervisor in the mid to late 1990’s until 2010. They have seen each other on occasion since that time, but have had no real further contact.

Mr. Turner is a capable attorney. He was much easier to deal with than some of the other attorneys in the County. Mr. Renner was confident sharing the heavy lifting with Mr. Turner and could delegate his workload to him without second charring it. He has a good command of the law, but because it is always evolving he does his research and keeps up with current information on his given subject matter.

In their work with the County Commissioners, Mr. Renner and Mr. Turner worked closely with the Board and made the best recommendations that they could. It was their job to make the recommendations so that the Commissioners could make their decisions based on their advice. Mr. Turner did a fine job of walking that tightrope and navigated the political waters well. Mr. Renner cannot recall the elected officials ever rejecting Mr. Turner’s recommendations.

Mr. Renner eventually handed over all of the liability cases to Mr. Turner where he worked closely with the Risk Manager to negotiate on behalf of the County. He did a fine job negotiating each case and always tried to resolve each one based on a cost benefit analysis. He did not want to bankrupt the County just to prove that they were right and always had the best interest of the client at the forefront of his process.

Mr. Turner has experience in many aspects of municipal law. He is knowledgeable in constitutional law, contracts, environmental law, land use, and labor and personnel matters. He has fantastic trial skills and works well independently. Mr. Renner did not have to do much supervising or hand holding when it came to Mr. Turner. Additionally, he was good at keeping Mr. Renner informed of what was happening in his area of responsibility through weekly meetings and daily information sharing.

Mr. Renner is not aware of Mr. Turner having been involved in anything controversial nor does he have any knowledge of any embarrassing item in his background. He has the skill set, experience, and knowledge to handle a City Attorney position.

Reference Notes
John Turner

Words or phrases used to describe John Turner:

- Bright,
- Works independently,
- Somewhat reserved, and
- Familiar with the rules and can be aggressive without being brash.

Strengths: Extremely capable attorney who is easy to work with and works well independently.

Weaknesses: Because Mr. Turner did like to work independently he did not work well as a co-chair on cases. On a case for which he is given full responsibility, he prefers to have full discretion of the decisions.

Donna Marie Collins – Chief Hearing Examiner, Lee County, FL 239-533-8100

Ms. Collins first met Mr. Turner in 1991. She was an Assistant County Attorney and they both became Chief Litigators during the time they worked together in Lee County. She left that office in 2013 but continued to have contact with him and his staff in relation to her current position. Since Mr. Turner left Lee County in 2015 they have had some occasional contact.

Mr. Turner is a highly skilled litigator. In his role at the County he worked on all matters with litigation that local government faces. He has much experience in many areas of law including contracts, environmental law, land use, and labor and personnel matters. In closed meetings with the Board he gave the elected officials sound advice. She did not always agree with him, but the intended outcome was always reached. The only instances where the elected body did not follow his advice is when the Commissioners did not want to settle a matter right away, but wanted to keep it going a little longer.

Mr. Turner is the type of attorney who looks for solutions. He was on the end of the law where all of the issues were already escalated, therefore he was constantly searching for solutions to resolve them. He offered input on a very high level of workings in that office while he was there.

Working with the elected officials was something Mr. Turner did well. He was keenly aware of what was involved in regards to certain decisions regarding litigation. He prepared them as witnesses if necessary and helped them to navigate through litigation issues.

Ms. Collins is not aware of Mr. Turner being involved in anything controversial since she has known him. She is not privy to any information in his past that would be considered embarrassing. She would certainly consider him as a candidate for a City or County Attorney position because of his intelligence and experience.

Reference Notes
John Turner

Words or phrases used to describe John Turner:

- Intelligent,
- Reliable,
- Humorous,
- Can become cranky at times, and
- Focused.

Strengths: Highly intelligent and experienced litigation attorney who works well with his elected officials.

Weaknesses: At times his personal style can be a little rigid.

Cecil Pendergrass – Commissioner, Lee County, FL 239-533-2227

Mr. Pendergrass grew up in the Lee County area and has known Mr. Turner since about 1991. However, he did not truly work with him until he was elected to the Board in 2012. He has had some occasional contact with Mr. Turner since he left in 2015.

Mr. Pendergrass was happy with Mr. Turner's performance as an attorney. He was professional, proficient, and managed his time well. They worked together on a few cases and Mr. Pendergrass was always confident in his recommendations. He made substantial decisions and recommendations weighted with good merit.

Mr. Turner was solution oriented, but was also clear about what was allowed by the law. He did well to find a fair balance between those two items. Although Mr. Turner was a knowledgeable and experienced attorney, Mr. Pendergrass only worked with him on land use issues and can only speak to his experience in that area.

In regards to communication, Mr. Turner kept Mr. Pendergrass in the loop regarding those issues in which they were involved. He sent him emails or spoke with him during scheduled meetings. He had a calm demeanor and an easy going communication style. Mr. Pendergrass always felt comfortable speaking with him.

Mr. Pendergrass is not aware of Mr. Turner being involved in anything controversial. He does not know of anything in his background that would be thought to be unflattering if the press were to investigate. He was surprised at Mr. Turner's departure, but a new County Attorney had come on board and the elected officials are not involved with those personnel aspects because of their County charter. He would definitely be in Mr. Pendergrass' top three picks if he were hiring a City or County Attorney.

Reference Notes
John Turner

Words or phrases used to describe John Turner:

- Calm demeanor,
- Informative,
- Knowledgeable about the issues, and
- Good communication skills.

Strengths: Proficient attorney who has excellent communication skills and is knowledgeable about the law.

Weaknesses: None identified.

John Manning – Commissioner, Lee County, FL 239-533-2224

Mr. Manning first met Mr. Turner in 1991. He was on the Commission until 2001 and then left. He then returned in 2010 and worked somewhat with Mr. Turner from that time until Mr. Turner left in 2015. They have had no further contact.

Although Mr. Manning did not work with Mr. Turner much he knows that he was a diligent worker. He spoke with him on occasion and was always given sound legal advice. He is the type of attorney to work through the issues and not just say that the law does not allow something to happen.

When Mr. Turner did interact with the elected officials he did so professionally and gave them a clear interpretation of the law. He was experienced and knowledgeable and knew the answers when the Commissioners asked about legal matters.

Mr. Manning is not aware of Mr. Turner being involved in anything controversial. He does not know of any item in his past history that would be construed as embarrassing if the press were to investigate. The only reason he can think of as to why he was let go is because the new County Attorney is moving in a different direction. He would be a good City or County Attorney for a small municipality.

Words or phrases used to describe John Turner:

- Diligent,
- Hard working,
- Gives good legal advice, and
- Knowledgeable of the law.

Reference Notes
John Turner

Strengths: Diligent professional who knows the law and gives sound legal advice.

Weaknesses: None identified.

Frank Mann – Commissioner, Lee County, FL 239-533-2225

Mr. Mann knew of Mr. Turner before joining the Commission in 2006, however, he did not really get to know him and work with him until that time. He has run into him in town a few times since he left in 2015.

Mr. Mann has always had a good opinion of Mr. Turner. He knows him through his fairly successful litigation practices with the County. He seemed to have picked up on the culture of the County fairly quickly and performed quite well.

Mr. Turner was the expert and Mr. Mann always felt that he was given good recommendations. He does not recall the Council ever not taking his advice and going in a different direction. He was always inclined to take his advice and had no regrets in doing that.

Although Mr. Turner was one to find solutions to issues, he did strike a balance between solutions and upholding the restrictions of the law. He was very good at keeping Mr. Mann informed and up to speed in regards to issues for which he was responsible.

Mr. Mann is not aware of Mr. Turner being involved in anything controversial since he has known him. He does not have any information about his past history that would be considered embarrassing if the press were to go digging. He would certainly make the short list if he were looking to hire a City Attorney.

Words or phrases used to describe John Turner:

- Competent,
- Balanced,
- Good communicator, and
- Gives sound legal advice.

Strengths: Successful litigator who gives good legal advice to his elected body and ensures to keep them well informed.

Weaknesses: None identified.

Prepared by: Heather Linares
Colin Baenziger & Associates

CB&A Internet Research

Internet – Newspaper Archives Searches
John Turner
(Articles are in reverse chronological order)

Fort Myers News- Press
July 4, 2015

John Turner joins Fort Myers law firm

The Law Office of Kevin F. Jursinski & Associates announced the addition of its newest associate attorney, **John S. Turner**.

Turner specializes in the practice area of civil trial law. He is board certified in city, county and government law with special emphasis in business, real estate and construction litigation.

He was previously the senior assistant county attorney for Lee County. For more than 20 years, he represented and defended the county in cases involving real estate and business related legal matters.

Internet – Newspaper Archives Searches
John Turner
(Articles are in reverse chronological order)

News-press.com (<http://www.news-press.com/story/news/2015/03/07/purge-county-attorneys-office-lee/24557759/>)
March 7, 2015

Two fired at county attorney's office in Lee County

Author: Heather Wysocki

Lee County Attorney Richard Wesch's office is down three attorneys but up two new ones in a recent internal shakeup. On Feb. 20, Assistant County Attorneys **John Turner**, Jack Peterson and Dawn Perry-Lehnert were "no longer employees of Lee County," Wesch stated in a memo to county commissioners. Perry-Lehnert, a 21-year employee of the office, retired. But **Turner**, a 23-year veteran who served in some supervisory capacities as chief assistant county attorney, and Peterson, a 25-year employee, were terminated, county spokeswoman Betsy Clayton said in an email.

Wesch released a brief statement on the terminations, thanking the employees and stating only that his office "has an ongoing commitment to analyzing efficiencies in furtherance of its commitment to continuous quality improvement." Both **Turner** and Peterson's annual employee evaluations from the past five years show an overall level of work that was deemed at the very least average, and often well above that. But each had specific marks on their records as well, according to those documents.

Turner is described in the reviews as an "extremely skilled trial attorney" but as "inconsistent" in terms of how he treats attorneys under him. He "tolerates low performance in some employees yet (is) rigid in expectations of others which creates tension in the Section," Deputy County Attorney Andrea Fraser wrote in a 2012 review.

The biggest black mark on Peterson's file in the last five years was that he was "not prepared" for a trial "and it showed in the verdict," which **Turner**, his supervisor at the time, wrote in a 2012 evaluation. In that case, county commissioners eventually approved a \$2 million settlement, according to county documents. Peterson disagreed with **Turner's** assessment

Wesch's office has already filled in the gaps left by two of the former attorneys with two new hires. Corris McIntosh, formerly of Buchanan Ingersoll Rooney/Fowler White Boggs, and Mark Trank, who ran his own practice, started as assistant county attorneys Thursday, according to a Tuesday memo from Wesch.

Internet – Newspaper Archives Searches
John Turner
(Articles are in reverse chronological order)

The Pine Island
February 16, 2013

Lee County Commissioners Discuss the Ceitus Controversy
Author: Phil Buchanan

John Turner, Assistant Lee County Attorney, today as scheduled, provided the Lee Commissioners a briefing on the Ceitus mediation and litigation. Neither the public nor any experts on the subject were allowed to speak, and only the commissioners were allowed to respond. He said what started off as a boat lift or sheet flow issue has, per his consultant Kevin Erwin, become a broader issue and they need to develop a strategy for the entire area, which he described as 15 to 16 miles of shoreline. He said as regards pre-trial mediation, which is scheduled for 6 March, they have three options: (1) go to mediation and present our data, or (2) delay mediation and gather more data, or (3) end mediation. He asked for BOCC guidance.

Commissioner Tammy Hall said the Natural Resources Director (Roland Ottolini) should be in charge of this issue and not the County's Attorney's Office. [Note: Ottolini lives only a block or two behind the Barrier and in fact was one of the Cape Coral people that arranged for the Barrier to be removed—he was excluded from the mediation/litigation because he has a direct conflict of interest.] Hall said the \$1.5 million set aside for the barrier reconstruction should be used for more worthwhile environmental projects. She said the “citizens committee spent two years coming up with a list of projects that would be better than rebuilding the Barrier.” [Note: That statement is incorrect. Cape Coral presented that group a list of city projects that they preferred the money (including County money) be spent on; but the group, which is known as the Environmental Management Agreement, voted 14 to 4 to reject that list based on a finding that restoration of the Barrier would provide greater environmental benefits. The EMA vote was and still is legally binding.] Hall noted that the consultants have spent \$300,000 of the \$500,000 set aside for the litigation and have accomplished nothing—she claimed that eventual costs of the litigation could be \$1.5 million. Hall also claimed the BOCC had not approved Commissioner Manning as the BOCC representative to the pre-trial mediation. She said the matter should be turned over to Ottolini, who should start doing other projects.

Commissioner John Manning said we should go to mediation, which is a precondition to litigation, and then revisit the issue. Commissioner Frank Mann said he was frustrated. He noted they had previously voted unanimously to continue the fight, but there was no progress—“only talking and no listening.” He said he “accepted at face value the word of the Cape representatives” that (1) “tidal increase changes science” and (2) that “no evidence of damage has been presented—where are the dead mullet, where are the dead sea grasses?” [Note: We have presented dozens of photographs of dead marine life including tunicates, sponges, oysters, and sea grasses as well as sea grass beds and oyster beds smothered in siltation, plus dozens of photographs of horrendous algae blooms. We even presented to the EMA sample bodies of the dead marine life (not including mullet and other fish, which in adult form are generally unaffected by the excess fresh water). Second note: Sea level rise has been about 4 inches since the North Spreader was built, but it takes 16 inches of spreader canal rise provided by the Ceitus

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John Turner
(Articles are in reverse chronological order)

Barrier to regain historical flows into the wetlands—that’s real science and it does not change.] Mann said we should give the Cape one last chance to agree, and that we should ask the DEP for their view.

Commissioner Larry Kiker demanded to know who is in charge of this issue, and said having “lawyers running business” is bad. He insisted that “Ottolini be involved.” He also said he prefers that Ceitus funds be reallocated. Commissioner Cecil Pendergrass said he personally wanted to know why the Ceitus permit was denied by DEP. He also said the big issue is water quality. **Turner** said a formal motion was unnecessary and that he had the guidance he needed. He said they would proceed with the 6 March mediation proceeding and that Ottolini would be involved. He also said they would check with DEP and the Corps of Engineers.

My personal comment: The loss of environmental expert Ray Judah and his leadership from the Board of County Commissioners has changed the BOCC from a dependable protector of the environment (with consistent 5 to 0 votes on Ceitus and many other environmental matters) to what you see in the above discussion.

Internet – Newspaper Archives Searches
John Turner
(Articles are in reverse chronological order)

NBC-2.com
February 7, 2012

Boat lift has county threatening to sue Cape Coral

Author: Alex Boyer

LEE COUNTY - The City of Cape Coral could be headed to court. Lee County is threatening to sue the city if the city council refuses to reinstall the controversial Ceitus Boat lift. A contentious meeting Tuesday ended with no deal in sight. "Why are we hear today? Because the law requires it. We're not here to share information," said Cape Coral Finance Director Victoria Bateman.

On one side of the table were Cape Coral city leaders - including the interim city manager and finance director. On the other side was Assistant Lee County Attorney **John Turner**, who was only interested in having one question answered. "What we need to know is what the city wants to do as far as the boatlift is concerned," he asked Tuesday. He was referring to the controversial Ceitus Boat Lift, which the county wants to see reinstalled in north spreader canal system.

The city refuses to reinstall the barrier - opting for a water quality improvement plan that doesn't include the barrier. "That's exactly what we want to do by unanimous consent of council," said Cape Coral Civil Engineer Oliver Clarke. But that's not what the county wants. "Frankly, that plan has been reviewed and, as determined by the county commissioners, does not solve the problem," **Turner** said.

According to **Turner**, the "lack of barrier" is depriving the large areas of mangroves west of the north spreader canal from seasonal flushing required to support the ecosystem and estuaries. So the county's only offer to the city is reinstall the Ceitus Boat Lift, or they will be taken to court. "It appeared Mr. **Turner** was under the direction of his client to come here and say, 'We'll see you later,'" said interim Cape Coral City manager Steve Pohlman. We tried talking to **Turner** after the meeting, but he wasn't interested in speaking to the media. The next step will be for the Cape Coral City Council and the Lee County Commissioners to meet. That meeting date has not been set.

Internet – Newspaper Archives Searches
John Turner
(Articles are in reverse chronological order)

Bonita Daily News (Bonita Springs, FL)
August 12, 2006

Lee, disabled citizens group settle suit
Author: Kristen Zambo

Lee County and a disabled citizens advocacy group have settled a year-old federal lawsuit accusing the county of discriminating against the physically impaired at more than a dozen parks. Disabled residents Dana Lamb and Tony Lucibello and Access Now Inc. filed suit against the county in U.S. District Court in Fort Myers in May 2005. They said in the discrimination suit that a Bonita Springs site and 13 Lee County parks violated the Americans with Disabilities Act. Court records show the two sides have settled the lawsuit, but terms of the agreement were not disclosed.

A message was left Friday for Stephan Nitz, the attorney for Lamb, Lucibello and Access Now, but he was unavailable for comment. Lamb and Lucibello could not be reached for comment on the settlement. A message was left Friday for **John Turner**, a county attorney, but he was unavailable for comment.

The suit named the Bonita Springs Community Hall, 27381 Old 41 Road, as one of the parks that did not make adequate provisions for those with disabilities. It was unclear, though, if the suit instead meant to name the Bonita Springs Recreation Center at 26740 Pine Ave. The recreation center has tennis courts, a swimming pool, picnic tables, playing fields, recreational center and a playground, some of the amenities that could not easily be accessed by wheelchair-bound visitors. None of those amenities are available at Community Hall. The city was not named as a defendant in the lawsuit.

Other sites listed in the lawsuit were Alva Community Park/Center, Boca Grande Community Park, Pine Island Park, Hancock Community Park, Lehigh Acres Community Park, Veteran's Community Park, Bay Oaks Community Park/Recreation Center, Brooks Community Park, Harlem Heights Community Park, Judd Community Park, Milton Burke Community Park, Matlacha Community Park, and North Fort Myers Community Park.

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John Turner
(Articles are in reverse chronological order)

Naples Daily News (FL)
November 23, 2005

Lee County ready to sue over Corps' Lake O releases
Author: KATE SPINNER

If Lee County sues the U.S. Army Corps of Engineers and the South Florida Water Management District over Lake Okeechobee releases, it won't be the first time. County attorneys advised commissioners Friday that if they bring suit, they will be fighting an uphill battle. But attorneys said the county will at least have lessons from the past to draw upon. County commissioners met after their regular session Tuesday to discuss putting a stop to the Army Corps' practice of sending high levels of polluted water from Lake Okeechobee down the Caloosahatchee River.

To prevent flooding, the Army Corps releases lake water into the river when stormwaters fill the lake beyond its capacity. Local leaders, environmentalists and residents say the lake water is ruining the river, its estuaries and business interests that depend on a healthy environment. In hopes of pressuring the South Florida Water Management District (SFWMD) and the Army Corps into finding an alternative to releasing water west, commissioners and leaders in Sanibel, Fort Myers Beach, Bonita Springs and Cape Coral have been considering legal action. "The time for politeness is gone and we need to just cut to the chase on this," Sanibel City Councilman Steve Brown said. Almost directly opposite from the mouth of the Caloosahatchee River, water quality around Sanibel Island and in San Carlos Bay has been particularly damaged from the lake releases.

Commissioner Ray Judah said that instead of exploring all the options available to them, the Army Corps and the district have been destroying the Caloosahatchee River and its estuaries by sending lake waters west. He said the district has not made a strong enough effort to find farmers south of the lake who are willing to be compensated for storing water on their fields. Chip Merriam, deputy executive director of water resources for SFWMD, said Judah's suggestion could cause damage to unwilling property owners. "The problem is you don't have the ability to surgically place water in that system," Merriam said.

Judah disagreed, saying the fields are in cells that are routinely flooded to rid the fields of pests without affecting adjacent fields. Commissioner John Albion agreed the district had not explored its options thoroughly, but he said it is not up to the county to decide where water should be stored. Albion, Judah and Hall agreed the county should urge the district and the corps to invoke emergency measures to send water anywhere but the Caloosahatchee River or the St. Lucie River to the east. Merriam warned that quick fixes don't solve long-term problems. "Should we delay a permanent fix for the short-term benefit to the estuaries?" Merriam asked. He said moving water to the farm fields will not provide a meaningful remedy to the problem.

Almost five years ago, when the Army Corps and the SFWMD adopted the shared adversity plan, which called for sending lake overflows to the east and west estuaries, Lee County filed suit in circuit court. Seeking a temporary injunction, the county argued that introducing the lake's

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John Turner
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nutrient-laden waters into the river violated the Environmental Protection Act. The water management district argued that the discharges resulted from the unpredictable variability of nature, Lee County Attorney **John Turner** told commissioners. The court ruled in the district's favor. The county appealed, but the ruling was not overturned. "From the 2000 litigation we learned a lesson," **Turner** said.

That lesson was that if the county wants the courts to impose a temporary injunction, the county has to prove the lake releases are not due to the variability of nature, but rather to the district's failure to remedy a known problem. While Lee County contemplates, the River's Coalition, a task force formed around the St. Lucie estuary, has already decided to pursue a lawsuit with the help of Earthjustice -- a non-profit organization that helps other entities fight environmental battles in court. "The conduct of the district and the Corps of Engineers has caused an environmental and ecological catastrophe to the people of Martin County," said David Guest, attorney with the Earthjustice office in Tallahassee. "That catastrophe will not go unchallenged."

Judah said Lee County should also consult with Earthjustice. At the next commission meeting on Tuesday, commissioners will hear more legal advice. Judah said he hopes to put the matter to a vote then. "I would like to see a time frame and what it means to us," Commissioner Tammy Hall said. "If we can't receive an injunction immediately, it's not going to give us any relief."

County Attorney David Owen will tell commission members at their board meeting next Tuesday how long it could take to stop the lake releases through the court system. He said the time-frame depends on the theory behind the suit and whether the suit is filed with the state or federal court. Albion warned that if the county does sue, much needed communication between the county and the corps will shift to the attorneys.

Commissioners on Tuesday expressed a desire to keep relations amicable between the Army Corps and the district. They asked the district to provide them with frequent updates on long-term projects that will help the river, the lake and the estuaries on both coasts recover from decades of management that did not take environmental considerations into account. "Once you shoot the bullet, it doesn't go back in the gun," Albion said.

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John Turner
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Naples Daily News (FL)
November 16, 2005

Businesses sue county over Alico Road median

Author: JAMIE HENLINE

The businesses are seeking an injunction to prevent the county from building the median because they say they cannot safely navigate U-turns with their equipment. Tractor-trailers loaded with thousands of tons of asphalt and oversized machinery will be forced onto U.S. 41 if the Lee County Department of Transportation builds a median across the Alico Road-Pennsylvania Avenue intersection, representatives of three San Carlos Park businesses and a property owner said Tuesday in Lee County Circuit Court. Three Florida companies, Coastal Precast, Guymann Construction and Ajax Paving Industries, and James L. Mann, owner of the property the businesses are on, are suing Lee County. The suit accuses the county of renegeing on a promise to leave the intersection open so the companies could make left turns onto Alico Road to access Interstate 75. The four businesses are seeking an injunction to prevent the county from building the median because they say they cannot safely navigate U-turns with their equipment.

U-turns are possible at the Schwab Driveway-Alico intersection, and larger trucks can still get to I-75 via another interchange, said Assistant Lee County Attorney **John Turner**, who moved to dismiss the case. Lee DOT moved the traffic signal from Pennsylvania to Schwab to satisfy a settlement with Seminole Gulf Railway, a railroad company that owns a short spur on Alico Road. Plans for projects such as roadway improvements often change, **Turner** added, and there was no written agreement between the county and the plaintiffs. "This is part of the police powers of the county to control how traffic travels on the right of way as a matter of public interest," **Turner** said.

James Mann, who has owned property on Pennsylvania Avenue since 1979, said that in his 29 years in the construction business, he had never seen plans change so drastically that an entire intersection was moved. "If most (plans) changed as much as Alico Road — I use a walking stick — I would have most likely broke it on that guy's head," Mann said. The larger trucks would have to take up all six lanes to navigate a U-turn, and some trucks would not be able to do it at all, said Theodore Petritsch, a consultant who acted as an expert witness for the plaintiffs. Both situations create public safety issues, he said. "The issue with the railroad is about money. It's not a public safety issue," said Rebein. "If it costs the county more, then the county will have to live with that." The plaintiffs will have to increase their prices to accommodate the extra 13 or so miles added to each of the hundreds of truck trips made daily, which will make them uncompetitive in the market and damage their businesses, said their attorney, Paul Rebein. Lee Circuit Judge William C. McIver said he would make his decision after both sides submitted detailed orders listing what their ideal outcomes of the case would be. The documents are due Dec. 1.

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John Turner
(Articles are in reverse chronological order)

NBC-2.com
May 7, 2004

Four counts of causeway lawsuit dismissed

LEE COUNTY- Friday afternoon Judge James Seals dismissed the city of Sanibel's lawsuit against Lee County over replacing the drawbridge on the Sanibel causeway. The judge said an interlocal agreement between the city and the county is null and void because the county doesn't have the power to make promises about county road maintenance to a city.

The city of Sanibel opposes the replacement of the span A drawbridge with a fixed span bridge and sued the county claiming the county violated an interlocal agreement that allowed Sanibel a say in causeway improvements. County officials are pleased with the decision. "Legally we are ready to proceed, we are able to proceed. The judge has given us the go ahead for the public safety and the various reasons we can't wait to get started full force," said Assistant County Attorney **John Turner**.

County officials say the county is looking into recovering the cost of defending themselves against the lawsuit. The judge dismissed all but one point in the lawsuit. Sanibel has 20 days to provide more information on that issue, whether the county maintained the causeway as it should have.

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John Turner
(Articles are in reverse chronological order)

Naples Daily News (FL)
December 23, 2003

Stadium transfer deal violated city's own law, suit says: Fort Myers' City of Palms Park was transferred to Lee County as part of a 15-year lease agreement with the Boston Red Sox

Author: CHARLIE WHITEHEAD

A Fort Myers resident has sued the city and Lee County over the deal that transferred the Boston Red Sox Spring Training stadium from the city to the county. Earl Smith, brother of former mayor Wilbur Smith, whose administration built the City of Palms Park, says in the suit that the city violated its own ordinance in making the transfer. Smith, who couldn't be reached for comment, said the city didn't follow its own legal guidelines on the transfer, including not giving adequate public notice. The county took over the stadium complex as part of a deal that included a new 15-year lease with the Red Sox. The team had threatened to leave the city because of poor maintenance of the facility.

Mayor Jim Humphrey structured the deal. He said the county's ability to provide the maintenance the Red Sox wanted and keep the team in town was the most important reason for the transfer. "With the county maintenance and operation, the Red Sox agreed to extend the lease for 15 years, and also to expand the use," he said. "We had a beautiful facility that cost a lot of money and it was used two months a year." The Red Sox's use of the stadium was exclusive, meaning the stadium and its practice facilities sat empty most of the year. The cash-strapped city had also let the maintenance slip to the point the county will be spending \$1.5 million on repairs almost immediately.

Humphrey said that's money the city won't have to spend. He said transferring ownership to the county will save city taxpayers around \$500,000 every year. That's less than it's been costing. The city is still paying between \$700,000 and \$900,000 every year to retire the bonds that built the stadium, and those payments will not go away. Humphrey said the city has lost money every year. "I compare it to having a nice boat," he said. "When you buy it it's only the beginning."

The city and the county will jointly defend against the lawsuit, with the city hiring outside counsel. Humphrey had asked that the county do the same, making the request after two assistant county attorneys wrote a letter to the News-Press criticizing the city for the deal. Assistant county attorneys **John Turner** and Jack Peterson, both Fort Myers residents, wrote in their letter the city was mismanaged and talked of creating a new town and calling for citizen involvement. Humphrey called County Attorney Jim Yaeger, the men's boss. "First I confirmed it was them that wrote the letter," Humphrey said. "I was certain it was, because I know them."

Humphrey said he has no problem with citizens expressing their opinions, but worried about two lawyers potentially involved in the city's defense. "I'm concerned if the office is aggressive and diligent," he said. "I understood one was assigned to the case." Neither is, Yaeger said. "What

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John Turner
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they do on their own time as citizens and taxpayers is really their issue," he said. "They are city taxpayers."

Yaeger said he talks with all his employees about what it means to represent the county. "They always represent the office, but there is a line," he said. "They have a right on their own to express their opinions." Yaeger said he wasn't sure that the lawsuit had been filed when the letter was sent. The county was served with lawsuit papers on Dec. 10. The letter appeared in the paper Dec. 14.

Regardless, Humphrey said he was assured by Yaeger the county will vigorously defend against the suit. Humphrey was himself the first full-time Lee County attorney back in the 1970s. He said he was shocked by the letter. "I would have expressed my disappointment," he said. "I don't mind them of course having a private life, but this is an issue of a client. You publicly expressed an opinion that's different than the client has." The city and county have until mid-January to respond to the suit.

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John Turner
(Articles are in reverse chronological order)

Naples Daily News (FL)
June 20, 2000

The county will pay out a total of \$174,200 to three property owners
Lee County ready to settle Old 41 lawsuits
Author: CHARLIE WHITEHEAD

FORT MYERS -- The Old 41 Road project is almost done -- physically and fiscally. Lee County is ready to settle lawsuits with three Old 41 property owners today, paying out a total of \$174,200. The settlements, assuming county commissioners approve them this morning, will leave three outstanding cases, two of which Assistant County Attorney **John Turner** said he expected to be settled only in court.

Project Manager Saeed Kazemi said there were only a few minor items left to wrap up, and the four-laning project through the heart of Old Bonita Springs is coming in under budget. The project, which got under way early last year, was expected to cost \$4.8 million, but Kazemi said today's settlements will bring the project cost to about \$3.7 million. "We did very good financially," he said. "Especially on the right of way." Business damages were expected to be a major part of the right-of-way cost, Kazemi said, but it hasn't happened that way.

Turner said settlements have included waivers of buffering requirements, and relocations of parking lost to the widening. The Community Redevelopment Agency is installing landscaping through a voluntary program that provides matching funds, but the waivers are for requirements included in the countywide land development code. "There is a certain amount of landscaping the county is putting in as part of the project," CRA planner Ellie McKuen said. "Anything above that is voluntary."

The Old 41 landscaping is the final chapter for the Bonita Springs CRA. McKuen said the county will probably be out of the mix by the end of July. The remaining land cases involve a private home, and two businesses owned by James Harris: Bonita Radiator and J & G Auto. **Turner** said the business cases are likely to end up in court, since the two sides remain far apart and court-ordered mediation has failed to produce a settlement. As for the project itself, Kazemi said the county and city are planning a ribbon-cutting ceremony for later this month. "We know we'll be under budget," he said. "We just don't know how far."

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John Turner
(Articles are in reverse chronological order)

Naples Daily News (FL)
January 20, 1999

The panel's acceptance closes the door on a legal battle with speculator Ron Francisco that dates back to the late 1980s.

**Lee County Commission
\$300,000 lawsuit settlement OK'd**

Author: CHARLIE WHITEHEAD

FORT MYERS -- A long, sad chapter in Lee County history could finally be drawing to a close. County commissioners approved the settlement Tuesday of a legal battle that dates back to the late 1980s, when speculator Ron Francisco first sued the county over a future road that county officials moved away from his property near Southwest Florida International Airport. The bankrupted Francisco, who filed suit against the county in 1991, is out of the picture, with the land trust he represented now being handled by local accountant Gerald McHale.

The lawsuit claimed county officials, including then-County Administrator Marsha Segal George, now Fort Myers Beach town manager, conspired first to delay development orders for a resort and convention center he planned and to move the route of Daniels Parkway, which became the main busy route to the airport, away from Francisco's property. Media accounts probed Francisco's supposed chummy relationships with some commissioners and other officials, and ethics complaints were filed against attorneys on both sides. Francisco eventually lost the \$28 million suit, and the county was awarded attorneys' fees and costs. The \$300,000 settlement commissioners agreed to on a unanimous vote Tuesday isn't the millions county attorneys once claimed to have invested their time and effort, an amount the court disputed, but it does cover the county's out-of-pocket expenses. The money would come from the land trust. "I didn't think I'd be here at this point," Assistant County Attorney **John Turner** said. "My recommendation is to accept this to close the case, hopefully, after eight years."

Francisco's troubles began in the high-flying 1980s, when Lee County land development was booming. He has provided inside information to federal investigators and private attorneys looking to clean up after several land deals of that era, including the deals that landed prominent local attorney Morton Goldberg in federal prison and litigation a West Coast financial institution is still pursuing against Barnett Bank and former bank officers. Some of Francisco's trust lands have already been bought by the airport, but the buy came much too late for him.

Land speculation was rampant in the late 1980s as huge public works projects such as the airport and the \$200 million county incinerator were under way. The settlement would close the chapter, but only if the promised \$300,000 payment is received within 90 days. If the payment isn't received, commissioners told **Turner**, they want him to pursue recovering taxpayers' money on all available fronts.

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John Turner
(Articles are in reverse chronological order)

Naples Daily News (FL)
March 21, 1997

ACTIVISTS LOSE BID TO OVERTURN CHARTER VOTE

Author: CHARLIE WHITEHEAD

FORT MYERS - A circuit court judge has rejected a move by two Lee County activists to overturn voters' approval last November of a charter form of government for the county. Circuit Judge William McIver turned down claims that the ballot language was misleading and that county attorneys improperly changed the wording on the ballot after commissioners approved the language. McIver ruled the ballot language was sufficiently clear and unambiguous and that the ballot question voters answered was substantially in the same form as the one county commissioners approved. McIver also ruled the addition of the words Home Rule to the ballot question, the change that Brian Griffin of Matlacha and Steve Maxwell of Alva claimed county attorneys made to assure the success of the referendum, would not mislead a person of ordinary intelligence.

We're very pleased with the decision, said **John Turner**, the assistant county attorney who argued the county's case. He said we followed the statute and the allegation "Home Rule" was ambiguous was without merit. I think it means the people of Lee County have opportunities they never had before, said County Administrator Don Stilwell. It gives local control, which was what it's all about. Maxwell said Thursday he's not yet seen the judge's ruling. We haven't really read it yet, he said. But we'll look it over and decide about an appeal. County voters have approved a new government charter twice. In 1994, 56 percent voted to adopt a charter, but Griffin challenged.

JUMP INFORMATION APPENDED

Hopefully, this will end the litigation, said Commissioner John Albion, who supported the charter. We're still basically headed the same direction, but it's good to have it over with. Charter supporters point to the initiative and recall powers it gives voters. Under a charter form of government, voters also can place ordinances on the ballot through petition. Opponents, however, say so many areas are excluded from that process - including matters like taxes, budget, salaries and individual capital improvement projects - that charter government has no real power.

Turner said he's confident the county would win any appeal. I'm definitely confident if there's an appeal, he said. I think they'd have a very difficult time. McIver specifically reserved jurisdiction on a possible award of fees and costs. Even though Griffin won the first challenge, he ended up paying portion of his own legal bills. Since the pair lost this round, Griffin and Maxwell could end up paying the county's tab. **Turner** said that's a possibility he'd have to take up with county commissioners.

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John Turner
(Articles are in reverse chronological order)

Naples Daily News (FL)
March 28, 1996

PUTATIVE PUEBLO PROBERS STAY MUM

Author: ALISON GERBER

The federal team that toured the Pueblo Bonito site won't say what they're doing, but the accusations of housing discrimination leveled against Lee County are no secret. BONITA SPRINGS - When attorneys with the Justice Department came to Lee County earlier this month, they toured the site of proposed farmworker community Pueblo Bonito, Manna Christian RV Park and other sites in Bonita Springs. But don't ask Justice Department officials whether they're conducting an investigation into whether the county discriminates in providing housing. They won't tell you.

The tricky thing, said Justice Department spokesperson Myron Marlin, is that we cannot comment on whether an investigation exists. The county already is under investigation by the U.S. Department of Housing and Urban Development, which is examining why Lee County rejected the zoning needed to build Pueblo Bonito - a 150-unit farmworker housing development in Bonita Springs.

While HUD has the authority to pull the county's community block grant money, the Justice Department could file a civil suit, asking for damages and punitive awards. If HUD determines the county discriminated against Hispanic farmworkers, it could turn their findings over to the Justice Department for legal action. The Justice Department also has the power to act alone against the county - but only if it has evidence of a pattern of discrimination.

PROBE2D
JUMP INFORMATION APPENDED

Some Hispanics see a pattern of discrimination. The visit from Justice Department officials in early March is one of the worst-kept secrets in Lee County. But when county attorneys contacted Justice Department attorneys recently, all they could get was a confirmation that the Justice Department had been here. That's about all they said, said Assistant County Attorney **John Turner**. I initiated the call. They said they were down here, but it's my understanding that they let HUD do all the investigating work and then they come in if they decide to. They weren't necessarily here because of the (Pueblo Bonito) case. It could have been anything else in Lee County or Fort Myers or the City of Naples.

Some Hispanic advocates say a pattern of discrimination emerged during last year's floods in eastern Bonita Springs. They say Lee County did not act swiftly enough to find alternate housing for 1,700 flood victims - many of them Hispanic residents left homeless by the disaster. Those victims spent up to 10 weeks in shelters.

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John Turner
(Articles are in reverse chronological order)

In October, as they chanted “We need housing”, members of the Farmworker Association of Florida protested outside the county emergency management center in North Fort Myers. Protesters said Hispanic flood victims were not provided adequate shelter nor enough interpreters. More recently, Lee County dropped plans to apply for federal hazard mitigation funding to buy Manna Christian RV Park after a flood committee, under the wing of the Bonita Springs Chamber of Commerce, objected. The county instead combined the Manna application with the South Florida Water Management district's application for funding. Manna Christian has flooded three times in the past five years. It is home to about 1,100 flood victims.

In December, Lee County commissioners refused to re zone from mobile home to multi-family the 26.5-acre tract on which Partnership in Housing wanted to build Pueblo Bonito. Commissioners said the development proposed too great a density to be compatible with surrounding neighborhoods. HUD stepped in at the request of several would-be Pueblo Bonito residents who claimed discrimination. Chris Larson, attorney for Florida Rural Legal Services and Partnership vice president, said she is hopeful the intervention of the federal government will result in an agreement. I'm hoping there will be a solution, she said. We don't want to be deadlocked

Research Compiled by: Cara Slade
 Colin Baenziger & Associates

City Commission Special Meeting, 1:30 pm

Meeting Date: 03/10/2016

Re:

Information

SUBJECT:

Philip N. Sherwin

Attachments

Sherwin

Form Review

Form Started By: Linda Cox

Started On: 03/08/2016 11:50 AM

Final Approval Date: 03/08/2016



Section 4

Philip “Phil” N. Sherwin

*Fort Pierce City Attorney
Candidate Report*

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Cover Letter

Section 4

Philip N. Sherwin
P.O. Box 2330
Arcadia, FL 34265

January 14, 2016

Colin Baenziger
Colin Baenziger & Associates
2055 South Atlantic Avenue - Suite 504
Daytona Beach Shores, FL 32118

Re: City Attorney Position, City of Fort Pierce, Florida

Dear Mr. Baenziger:

I would like to express my interest in the position of City Attorney for the City of Fort Pierce, Florida. I consider myself a strong candidate having a diverse legal background with 15 plus years local government experience.

In addition to being Board Certified in City, County and Local Government Law, I spent the last 11 plus years as a senior assistant attorney in the Polk County Attorney's Office. The progressive responsibility I acquired throughout my career provides me with the experience and versatility necessary to handle and manage the operations of the City Attorney's Office of the City of Fort Pierce. I represented almost every major division within Polk County, including Utilities, Procurement, Solid Waste, Information Technology, Human Resources, Fire Rescue and Natural Resources and was the substitute Planning & Zoning Commission Attorney for a period of 6 years. I also reviewed subdivision plats for the County's Land Development Division to ensure their legal sufficiency. During my tenure in Polk County, for a period of 10 years, I represented the Utilities Division (water and wastewater) and provided the requisite legal guidance and assistance in order to help take it from a struggling entity under multiple consent orders to a well-organized, strategically focused utility. I have a strong background in litigation and helped coordinate and manage the County's lawsuits with our outside counsel in complex legal matters. Since 1992, I have been certified as a circuit court civil mediator and am intimately familiar with the mediation process. I am also very accustomed to interacting and working closely with county boards, management, and staff at all levels of local government.

Earlier in my career, I was the first full-time Assistant City Attorney for the City of Cape Coral, Florida and together with the City Attorney handled the vast majority of litigation in-house; which included civil forfeiture cases I handled for the City of Cape Coral Police Department.

Based on the breadth of my legal experience, I am confident that I would be able to take on the duties and responsibilities of the City Attorney on day one, build a strong in-house team and deliver high quality legal service to the City Commission and City Administration. In May, although the City Commission ultimately chose another candidate, I was selected by the national recruiting firm, the Mercer Group and the Pompano Beach City Commission to be a finalist for the position of City Attorney of Pompano Beach, Florida and in November 2015, I was a finalist for the position of City Attorney of North Miami, Florida.

Please note my Board Certification continues during the pendency and review of my Recertification Application, which was timely submitted to the Florida Bar's Legal Specialization and Education Department.

Section 4

Although, I currently do not live in the City of Fort Pierce, I would be willing to relocate if offered the position. If you need further information, please do not hesitate to contact me on my cell phone at (239) 560-3624 or by email at pnsherwin@gmail.com.

Sincerely



Philip N. Sherwin

Section 4

Resume

PHILIP N. SHERWIN

P.O. Box 2330 • Arcadia, Florida 34265
863.494.2875 (home) • 239.560.3624 (cell)
pnsherwin@gmail.com

EDUCATION

- Northern Illinois University College of Law, DeKalb, Illinois (1979), Juris Doctor
- University of Miami, Coral Gables, Florida (1974), B.A. in Psychology
- University of Iowa, Iowa City, Iowa (1972)

STATE BAR/COURT ADMISSIONS

- United States Supreme Court (1988)
- U.S. Court of Appeals for the Eleventh Circuit (2014)
- United States District Court, Middle District of Florida (1986)
- Florida Bar (1983)
- United States District Court, Northern District of Illinois (1980)
- Illinois Bar (1980)

CERTIFICATIONS/TRAINING

- Board Certified by the Florida Bar as a specialist in City, County, and Local Government Law (2010)
- Certified as a Circuit Court Mediator through participation in the American Arbitration Association State Certified Circuit Court Mediator Training Program (1992)
- Participated in an intensive language training program, Center for Foreign Students, National Autonomous University of Mexico, Mexico City, Mexico (1980, 1982)

LEGAL EXPERIENCE

Polk County Attorney's Office (June 2003–January 2015)

330 W. Church Street, Bartow, Florida 33830
Assistant County Attorney III

- Primary responsibilities included providing legal counsel and assistance to the Utilities, Procurement, Waste Resource Management, Fire Rescue, Parks and Natural Resources, Communications, Fleet Management, Human Resources, Information Technology Divisions; reviewed subdivision plats for legal sufficiency for the Land Development Division. Also provided legal counsel to the Contractor's Licensing Board, Stormwater Technical Advisory Committee (STAC), and the Conservation Lands Acquisition Selection Advisory Board (CLASAC).
- Duties arising from the representation of the above departments and divisions included but have not been limited to: in-house litigation matters; attending court hearings and mediation conferences; preparing, reviewing, and/or negotiating utility agreements, deeds, easements, use permits, license agreements, sponsorship agreements, leases, cooperative funding agreements with the Florida Department of Environmental Protection and the Southwest Florida Water Management District; drafting and revising ordinances and resolutions.
- Other responsibilities included but have not been limited to: assisting in the negotiation of consent orders and modifications to consent orders between Polk County and various permitting agencies; preparing interlocal agreements between Polk County and various municipalities or other governmental agencies; reviewing and revising contracts for the purchase of goods and professional services; and collaborating with other agency attorneys and utility departments as part of an entity known as the STOPR Group, which is comprised of the City of St. Cloud, the Tohopekaliga Water Authority, Orange County, Polk County, and the Reedy Creek Improvement District on regional water supply planning and permitting, as well as issues relating to the Central Florida Water Initiative.

Philip N. Sherwin, P.A. (1989-2003)

1227 N.E. 2nd Place, Cape Coral, Florida 33990
Proprietor and President

- Practiced general civil law including but not limited to medical malpractice and personal injury law; quiet title, foreclosure, and eminent domain actions; and contract disputes. As a member and agent of Attorneys' Title Insurance Fund, Inc., performed title searches, issued title policies and opinions, performed examinations of real property and reviewed real estate contracts, including those involving 1031 exchanges, as well as the handling of zoning matters.

City of Cape Coral (1985-1989)

P.O. Box 150027, Cape Coral, Florida 33915-0027
Assistant City Attorney

- Handled foreclosure of special assessment liens; drafted ordinances and resolutions; represented the City of Cape Coral before the Contractors Regulatory Board; provided legal advice and assistance to city staff, handled personnel matters, prosecuted forfeiture cases for the Cape Coral Police Department; represented the city in both federal and state court matters; prepared briefs and argued appeals.

Fetterman and Associates (1984-1986)

630 U.S. Highway 1, North Palm Beach, Florida 33408
Associate

- Prepared plaintiff's personal injury actions, including the preparation of complaints, interrogatories, requests to produce, legal memoranda, briefs, and handled motions and related matters before the court.

Broad and Cassell (1982-1984)

2 South Biscayne Boulevard, Miami, Florida 33131
Law Clerk/Research Assistant

- Worked with Lewis Horowitz, Of Counsel with the firm and Town Attorney for Bay Harbor Islands, Florida; performed research, wrote legal memoranda and briefs, drafted town ordinances and resolutions, prepared legal documents related to mortgage foreclosure actions.

OTHER WORK EXPERIENCE

- English Language Instructor, Communication International, Mexico City, Mexico (1981-1982)
- Worked with Lic. Lucio Cabrera, Professor of Law, National Autonomous University of Mexico, Mexico City, Mexico

PROFESSIONAL/COMMUNITY VOLUNTEER SERVICE

- Florida Bar Judicial Nominating Procedures Committee (2008-2014)
- Cape Coral Firefighters Memorial Committee (2001)
- Board of Directors, Southwest Florida Audubon Society (1991-1993)

PROFESSIONAL ASSOCIATIONS

- Florida Bar Association
- Illinois Bar Association

References available upon request.

Section 4

Candidate Introduction

PHILIP N. SHERWIN

EDUCATION

Northern Illinois University College of Law, DeKalb, Illinois (1979), Juris Doctor
University of Miami, Coral Gables, Florida (1974), B.A. in Psychology
University of Iowa, Iowa City, Iowa (1970-1972)

CERTIFICATIONS/TRAINING

- Board Certified by the Florida Bar as a specialist in City, County and Local Government Law (2010)
- Certified as a Circuit Civil Court Mediator through participation in the American Arbitration Association State Certified Circuit Court Mediator Training Program (1992)
- Participated in an intensive language training program, Center for Foreign Students, National Autonomous University of Mexico, Mexico City, Mexico (1980, 1982)

EXPERIENCE

Assistant County Attorney III, Polk County, Bartow, FL	June 2003-January 2015
Philip N. Sherwin, P.A., Cape Coral, FL	1989-2003
Assistant City Attorney, City of Cape Coral, FL	1985-1989
Associate Attorney, Fetterman and Associates, WPB, FL	1984-1985
Law Clerk/Research Assistant, Broad and Cassel, Miami, FL	1982-1984

BACKGROUND

Polk County is the geographical center of the State of Florida and is Florida's ninth most populous county with a population of well over 600,000 people. It is home to the largest collection of Frank Lloyd Wright architecture in the world. It has numerous institutions of higher education including technical schools, community colleges and public and private universities. One of these, Florida Polytechnic University, is Florida's only public university dedicated to science, technology, engineering, and mathematics. Another esteemed institution is the International Baccalaureate School at Bartow High School, which was ranked as the second best high school in America in 2013 by Newsweek.

Phosphate, citrus, and tourism industries continue to remain powerful economic engines in Polk County. However, because Polk County has a relatively low cost of living and attractive tax rates and because it is in close proximity to Tampa and Orlando and has an extensive transportation system of highway, rail, nearby airports and deep water ports, it is an attractive place to do business and has a rapidly expanding export base. In 2014, Amazon opened a warehouse distribution center in Polk County.

PHILIP N. SHERWIN

The tourism industry has undergone change in Polk County with the opening of LEGOLAND in 2011. In addition, the world class Streamsong Golf Resort and Spa celebrated its grand opening in 2013 and Premier Golf, the official travel company for the PGA, placed Streamsong on its list of “The Magnificent Seven” golf resorts in the U.S. Both facilities have contributed to record tourism tax collections for the County.

Polk County government employs nearly 2000 people and has a budget of over 1.27 billion dollars. The County Attorney’s office employs six lawyers and has a support staff of 3 people and a combined budget in excess of 1.25 million dollars. The lawyers in the County Attorney’s office operate as a collegial group with the senior attorneys mentoring the less experienced attorneys, while the entire office functions as a team. I supervised a paralegal and an administrative assistant. With a county population of over 600,000 and nearly 2000 employees, the focus of the County Attorney’s office is on handling the day to day issues that arise out of the county departments and divisions, resulting in a very heavy workload. The senior ranking attorneys on the team were very adept at heading off lawsuits and I was one of those attorneys. Code enforcement matters, County receiverships, certain constitutional claims, claims arising out of the decisions of the Contractor’s Regulatory Board and some contractual claims were handled in-house. The most complex litigation was outsourced. I often coordinated the County’s lawsuits with our outside counsel. Also, some regulatory matters with the Southwest Florida Water Management District and Departmental Environmental Protection were handled in-house. These regulatory matters arose out of the County’s utilities (water and wastewater) and solid waste operations. An example of a regulatory matter with which I was involved was collaborating with a newly hired County Utility Director and outside counsel to bring about the first ever inter-district transfer of water between two Water Management Districts, the South Florida and Southwest Florida Water Management Districts. Polk County had been fortunate in that relatively few major lawsuits were brought against the County during my tenure. Lawsuits that were brought arose out of the use of the eminent domain statute, as the County had a very active transportation program that involved taking property for roads. Other lawsuits arose out of decisions by the Planning and Zoning Commission and the BOCC as they related to land development regulations. There were also personal injury and property damage claims.

GENERAL MANAGEMENT STYLE AND EXPERIENCE

At my very core I am a lawyer. I grew up in a family of attorneys. My father was a Martindale-Hubbell AV-rated attorney for almost 50 years and I have two older brothers who are attorneys practicing law in another state. I was very fortunate to land my first job in Florida as a law clerk and research assistant for Lewis Horwitz, at the law firm of Broad and Cassel. Mr. Horwitz was Of Counsel with the firm and the Town Attorney of Bay Harbor Islands, Florida. Mr. Horwitz had been the head of the litigation department. Earlier in his career he had been a prosecutor at the Nuremberg war trials. Both he and my father had an enormous influence on my legal thinking. One of my earliest assignments was to research a claim Mr. Horwitz wanted to bring. After thoroughly researching the matter, I had to report that I could find no precedent for making

such claim. Mr. Horwitz replied, “Phil, this is going to be a matter of first impression.” Thus, at a very early stage in my career in Florida I learned to think outside the box.

In addition to being Board Certified in City, County and Local Government Law by the Florida Bar in 2010, I spent 11 plus years as a senior attorney in the Polk County Attorney’s Office. The progressive responsibility that I acquired throughout my career provides me with the experience and versatility necessary to manage and handle the operations of the City Attorney’s Office for the City of Fort Pierce. I represented almost every major division within Polk County, including Utilities, Procurement, Solid Waste, Information Technology, Human Resources, Fire Rescue, Parks and Natural Resources and was the substitute Planning and Zoning Commission Attorney for a period of 6 years. I also reviewed subdivision plats for the County’s Land Development Division to ensure their legal sufficiency. Since 1992, I have been certified as a Circuit Court Civil Mediator and am intimately familiar with the mediation process. I am also very accustomed to interacting and working closely with county boards, management and staff at all levels of local government.

Earlier in my career I was the first full-time Assistant City Attorney for the City of Cape Coral, and together with the City Attorney, handled the vast majority of litigation in-house including civil forfeiture cases which I handled for the Police Department.

Becoming the chief legal counsel for the City of Fort Pierce would fulfill a lifelong career goal of mine of being the lead attorney of a local government agency. Based on the breadth of my legal experience and the 15 plus years of in-house local government experience, I am confident that I would be able to take on the duties and responsibilities of the City Attorney of Fort Pierce on day one, build a strong in-house team and provide high quality legal service to the City Commission and City Administration.

Excellent customer service would be the hallmark of my office. The support staff and attorneys would all understand that the primary goal of the City Attorney’s office is to provide excellent customer service to both the City Commission and City Administration. In hiring attorneys, I would seek to hire those who have a blend of transactional and litigation experience. Litigators tend to understand risk better and transactional attorneys tend to be wordsmiths. I would foster an open door atmosphere in the office where everyone felt comfortable exchanging ideas, as I believe this fosters mutual respect among colleagues. I would also have periodic staff meetings, the exact frequency of which would need to be determined.

The City Attorney’s office would be proactive in analyzing risks. Much of what local government attorneys do deals with contracts. As such, you must always ask yourself what the commercial risks are on the vendor versus those on the city. The goal is always to keep as much of the commercial risk on the vendor through language in the contract. If Fort Pierce has experienced or has been dissatisfied with some of the results of its procurement process, one avenue the City may want to explore is something called Best Value Procurement, which was developed by Dr. Dean Kashiwagi at Arizona State University. One of the divisions I

PHILIP N. SHERWIN

represented that was involved in large infrastructure projects was very pleased with outcomes using this approach.

Lawsuits that are served on the City need to be addressed promptly. As a practical matter, I always forward a copy of the served lawsuit to the Risk Manager to determine whether or not insurance coverage exists and to assign an attorney to the matter so an answer can be filed in a timely manner. As a Certified Circuit Civil Court Mediator, I understand the value of mediation. In handling lawsuits everything must be weighed with the City's best interest in mind, which entails a cost/benefit analysis as the matter progresses and a determination whether to settle or not. The City Attorney makes the recommendation to the City Commission, which ultimately determines how one proceeds with a lawsuit. In some cases, you may have a matter that will be particularly imperative to pursue to the end to deter others from bringing similar actions, while in other cases you must go to trial when there is no reasonable basis to settle the matter. Litigation is both time consuming and expensive, which must be kept in mind at all times.

The City Attorney owes the same duty to each and every City Commissioner, one of honesty and fairness in dealing with them and a commitment to provide them with the best possible legal advice. Here again, I would have an open door policy and would be available to them as is necessary and to the degree the commissioners desire. All communications with the City Commissioners must be made in accordance with Florida Sunshine Laws. During my tenure with Polk County I prepared and gave numerous PowerPoint presentations to various boards on the subject of Public Records and the Sunshine Laws. By the same token, I would also have an open line of communication with the City Manager and develop a close working relationship, so I could assist him in carrying out the policies of the City Commission in a legal manner. Having a close working relationship and an open line of communication with the City Manager are indispensable and help to avoid lawsuits in the first instance and make them easier to address when they do arise. At the same time, the City Attorney must maintain his independence as the chief legal advisor to the City Commission.

Elected officials would describe me as even keeled, intelligent, knowledgeable, thorough, thoughtful, experienced, approachable, personable and easy to work with. They would also describe me as a good communicator. The County Manager and/or the Deputy County Manager with whom I worked would add that I am an excellent problem solver. The above qualities are my strengths, and I would also add that I am detailed oriented, a tenacious negotiator and have an excellent sense of humor.

A weakness that has been most frequently pointed out to me by my paralegal or legal assistants over the years is my tendency to revise documents too often. My response to them is that once I sign off on the document, I am confident of its contents and the position(s) I have taken.

While in private practice I had some very nice pay days that resulted from handling personal injury matters and while that kind of success is exciting to experience, my greatest achievement has been the collaboration I had with the newly hired Utility Director and his successor in Polk

County. As a result of the legal advice and assistance I gave the Utility Department, I helped take it from a struggling entity under multiple consent orders to a well-organized strategically focused utility. Three examples of my assistance include the following: 1) Collaborating with the Utility Director and outside counsel to bring about the first ever inter-district transfer of water between two Water Management Districts. This allowed development to continue in Northeast Polk County in proximity to Orlando during the real estate boom, which otherwise could not have occurred because the County was placed under a consent order for years of over pumping a well in the Northeast Regional Utility Service Area in violation of its Southwest Florida Water Management District permit. 2) Successfully assisting in-house project managers/engineers with administering multi-million dollar utility plant expansion projects. 3) Changing the trajectory of a County receivership involving an abandoned, privately owned, unpermitted wastewater treatment facility that festered for 20 plus years before I was assigned to the matter and which allowed the County to get out from under it as a result of my recognition of the need to change the way Polk County did business with another local government agency. That agency became the future owner of the wastewater treatment facility.

Polk County is now a member of the Water Cooperative of Central Florida and a member of the STOPR group, which is comprised of the City of St. Cloud, the TOHO Water Authority, Orange County, Polk County and the Reedy Creek Improvement District. The Utility Department is now considered a cutting edge water supply planning department within the State of Florida.

One of the most important lessons I learned occurred while I was in private practice. I had a client that was not forthcoming with her medical history in a personal injury matter, which had serious consequences when it was uncovered by the attorney on the opposing side just weeks before trial and which led to a disastrous outcome at trial. The lesson learned was to put in place a system designed to overcome such behavior on the part of a client, by doing rigorous due diligence in the gathering of all facts at the outset.

If you are thinking of terminating an employee, you must first determine if the employee is in a probationary period, if the employee is an "at will" employee or whether employment is governed by a set of personnel rules or contract. This initial determination is your guide as to what procedures you must follow. As a general rule, I believe in giving an employee a chance to improve their performance. However, if an employee's conduct is willful, wanton, reckless and detrimental to the organization, I would seek to have the employee dismissed. I had to let one employee go while in private practice, but gave her a period of time to find another job.

In the first six months of my employment in Fort Pierce, I would work on getting the big picture of the organization, determine where the problems are and how best the City Attorney's office could remedy the problems and be of most assistance to the City Administration. I would meet with the City Commissioners to find out what their expectations were and garner and benefit from the intuitional knowledge of the current City Attorney. In building a strong in-house team, I would look to hire attorneys whose skill sets would best facilitate the remedy of existing problems within the organization.

PHILIP N. SHERWIN

Polk County has a Communication Director that works with the media.

I am an avid bicyclist, enjoy film, especially independent and foreign films and exploring new places through travel. Having a keen appreciation of art, I am very much aware of the importance of the cultural history of Fort Pierce, the landscape paintings of A.E. Backus, and the Florida Highwaymen legacy. Their contributions in creating a regional school of art and their role in preserving vanishing Florida landscapes have made Fort Pierce an important destination. My wife organized three Highwaymen art exhibitions at Highlands Hammock State Park as special featured events for the park's annual Civilian Conservation Corps Festival. I have thoroughly enjoyed attending Highwaymen exhibits in Vero Beach, Venice, Fort Myers, and Sebring.

There is nothing in my background that would prove embarrassing to the City of Fort Pierce, nor will any community activists come forward with any dirt on me.

SIX ADJECTIVES OR PHRASES I WOULD USE TO DESCRIBE MYSELF

- An excellent problem solver
- A keen intellect
- Approachable
- Experienced
- Highly ethical
- A good sense of humor

REASON FOR DEPARTING MOST RECENT POSITION

To seek new opportunities and challenges, having accomplished everything I could accomplish in Polk County and to fulfill a lifelong professional career goal of becoming the lead attorney of a local government agency.

CURRENT / MOST RECENT SALARY

My final compensation was \$94,400.

Section 4

CB&A Background Checks

**Background Check Summary for
PHILIP N. SHERWIN**

Criminal Records Checks:

Nationwide Criminal Records Search	No Record Found
County	
DeSoto County, FL	No Record Found
Polk County, FL	No Record Found
Lee County, FL	No Record Found
Federal	
Florida	No Record Found

Civil Records Checks:

County	
DeSoto County, FL	No Record Found
Polk County, FL	No Record Found
Lee County, FL	No Record Found
Federal	
Florida	No Record Found

Motor Vehicle	
Florida	No Record Found

Credit	Excellent
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Bankruptcy	No Record Found
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Education	Confirmed
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Employment	Confirmed
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Bar Certification/License	Member in Good Standing Bar #366471
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**Background Check Summary for
PHILIP N. SHERWIN**

THE FLORIDA BAR



ABOUT THE BAR NEWS & EVENTS FOR THE PUBLIC MEMBER SERVICES **LOG IN** FIND A LAWYER

THE FLORIDA BAR Find A Lawyer Profile

Philip N Sherwin

Member in Good Standing **Eligible to Practice Law in Florida**

Bar Number: 388471

Mail Address: PO Box 2330
Arcadia, FL 34285-2330
United States
Office: 239-560-3624
Email: pnsherwin@gmail.com

Personal Bar URL: www.floridabar.org/mybarprofile/388471

vCard:  ?

County: Desoto

Circuit: 12

Admitted: 06/03/1983

10-Year Discipline History: None

Law School: Northern Illinois University College of Law

Board Certifications:

Area	Year
City, County and Local Government Law	2010

Sections: City, County & Local Govt Law

Languages: English

Federal Courts: U.S. Court of Appeals for the Eleventh Circuit
U.S. Supreme Court
U.S. District Court, Middle District of Florida
U.S. District Court, Northern District of Illinois

State Courts: Florida
Illinois

Firm Size: One

Firm Position: Private Law Practice

The Find a Lawyer directory is provided as a public service. The Florida Bar maintains limited basic information about attorneys licensed to practice in the state (e.g., name, address, year of birth, gender, law schools attended, admission year). However, through this directory The Florida Bar allows individual attorneys the opportunity to provide for public information certain expanded personal and professional data. It is the attorney's responsibility to routinely review and update those expanded listings. The information contained in those expanded listings is presented by the Bar "as is" with no warranty of any kind, express or implied. The Florida Bar, its Board of Governors, employees, and agents thereof are not responsible for the accuracy of that additional data. Publication of attorneys' contact information within this listing should not be construed as their consent to receive unsolicited communications in any form. Certain unauthorized uses of this data may result in civil or criminal penalties. The Find a Lawyer directory is not a lawyer referral service.



**Background Check Summary for
PHILIP N. SHERWIN
Personal Disclosure**

Personal Disclosure Questionnaire

Name of Applicant: PHILIP N. SHERWIN

The following questions are designed so that we will be able to make full disclosure to our client concerning your background. Please answer them honestly. Cutting corners or misrepresenting your past will result in you being eliminated from all further searches conducted by this firm. We understand that frivolous charges are sometimes made and that charges do not mean you were guilty. We also understand that you may have been wronged and needed to seek compensation. The bottom line is that we want to be certain that our client is fully informed. If you have any questions, please contact us for clarification.

Please explain any yes answers on a separate sheet of paper.

1. Have you ever been charged or convicted of a felony?
Yes No
2. Have you ever been accused of or have been involved in a domestic violence or abuse incident?
Yes No
3. Have you ever declared bankruptcy or been an owner in a business that did so?
Yes No
4. Have you ever been the subject of a civil rights violation complaint that was investigated or resulted in a lawsuit?
Yes No
5. Have you ever been the subject of a sexual harassment complaint that was investigated or resulted in a lawsuit?
Yes No
6. Have you ever been convicted of driving while intoxicated?
Yes No
7. Have you ever sued a current or former employer?
Yes No
8. Do you have a personal My Space, Face Book or other type of Web Page?
Yes No
9. Do you have a personal Twitter Account?
Yes No
10. Is there anything else in your background that, if made public, would cause you, our client or our firm embarrassment if it came to light through the press or any other mechanism?
Yes No
11. Please provide a list of any lawsuits in which you are or have been a party either as plaintiff or defendant.
None

Attested to: Philip N. Sherwin
Signature of Applicant

Please email this form via PDF DOCUMENT to Lynelle@cb-asso.com or via fax to (888) 539-6531 no later than 5:00 PM CST 02-02-2016.

(Note: Please be sure to sign the form with your actual signature if you are sending Fax or PDF Document)

CB&A Reference Notes

**Reference Notes
Philip N. Sherwin**

Michael Craig – County Attorney, Polk County, FL 863-534-6482

Mr. Craig first met Mr. Sherwin in approximately 2006. They worked together from 2008 to 2015.

Mr. Sherwin's capabilities as an attorney are excellent. He is definitely responsive and Mr. Craig has never experienced any problems concerning timeliness with Mr. Sherwin. He is a good problem solver. He makes sure he speaks with all stakeholders, gathers the facts, then develops recommendations based upon and addressing all the complexities of the problem.

With regard to strengths, Mr. Sherwin is incredibly dependable and extremely gifted at building wonderful rapport with his clients, especially those who might prove challenging. Mr. Craig gave Mr. Sherwin the leeway to get his job done because he was confident the job would be completed in a proper, effective manner. Mr. Sherwin was one of the cornerstones of the Polk County staff.

Mr. Craig is the primary conduit when recommendations must be presented to the elected body, but Mr. Sherwin has significant influence because he handles the two largest income producing divisions in the County. He is very conservative and cautious when making decisions which deal with the law, and Mr. Craig prefers it that way. Furthermore, Mr. Craig trusts him enough to delegate the authority to Mr. Sherwin to handle all legal negotiations for the Divisions he represents.

Mr. Sherwin is definitely well versed in many aspects of the law, especially with contracts, as most of Mr. Sherwin's work in Polk County involved contracts. He is also well versed in environmental law and utilities. In fact, when assigned to the Utilities Department he was primarily engaged in sorting through a substantial number of consent orders which had been placed upon the Department. He was instrumental in making sure the Department was in compliance with the orders and bringing it up to par.

Although a different attorney handles land use issues, Mr. Sherwin is no stranger to this area of the law. When asked by the Planning Commission or the Board of Adjustments he steps in quite capably and knows his way around the subject matter without difficulty.

Within the Utilities Department Mr. Sherwin had anywhere from three to five major projects on the go at any one time. Through frequent personal meetings he did a phenomenal job of keeping Mr. Craig abreast of what is happening. When high profile issues arose they met on an as needed basis. Occasionally they talked three or four times per day, depending on the urgency of the matter.

Without a doubt, Mr. Sherwin has experience with and is superb at dealing with the public. He has a good nature about him. He is likeable and sincere. He has a knack for disarming people and calming any anxieties they might have when coming into the office to deal with legal issues.

**Reference Notes
Philip N. Sherwin**

Polk County fosters an open and accessible culture in the area of customer service. Mr. Sherwin definitely understood and performed well in this area. Each of the two divisions he handled is housed in a different building, but he had no difficulty going to the client rather than asking them to come to him, as most attorneys would request. He was highly regarded by his clients and was happy to do whatever he could to make them comfortable and keep them satisfied.

Mr. Craig does not know of any controversies other than regular, job related issues involving Mr. Sherwin. He is a very down to earth, conservative family man. Mr. Craig knows him very well and is unaware of anything in his background that might be considered embarrassing if the press were to investigate.

If Mr. Craig were looking for a City or County Attorney, he would definitely hire Mr. Sherwin to fill the position. He is poised and ready, and will serve the taxpayers of any community quite well.

Words or phrases used to describe Philip Sherwin:

- Dependable,
- Sincere,
- Friendly,
- Smart,
- Enjoyable, and
- Intuitive.

Strengths: Pays very close attention to details and extremely talented at resolving issues with others, without them walking away angry.

Weaknesses: Mr. Craig only wishes he had exposed Mr. Sherwin to legal areas other than primarily utilities. Unfortunately, he feels more at fault for this weakness because he relied so heavily on him in this particular area. It should not reflect negatively on his performance, as this was simply the nature of the position and organization.

Jean Reed – Former Polk County Commissioner, Polk County, FL 863-324-0702

Mr. Sherwin and Ms. Reed first met when she was elected in 2006, and they worked together until her term was up in 2010. They have not had any contact since she left office.

Mr. Sherwin is a very capable attorney who was always very responsive to Ms. Reed's requests. He was consistently available to her and willing to meet with her when she needed any legal assistance. He was good at resolving problems and did his work in a timely manner. She had full confidence and trust in Mr. Sherwin, in whatever capacity he served in.

**Reference Notes
Philip N. Sherwin**

Mr. Sherwin not only made good decisions when dealing with the law, he also negotiated extremely well on behalf of the County, especially with the Utilities Department. As far as Ms. Reed can recall he has knowledge and experience in all aspects of the law.

With regard to communications, Mr. Sherwin was open and did a fine job of keeping Ms. Reed informed of actions in his area of responsibility, thus practicing good customer service with those he served in the County. Additionally, he has experience with the public and is a good speaker. He says what he is thinking and has a fantastic demeanor when speaking and dealing with others whether Commissioners, the staff, or County constituents.

Ms. Reed is not aware of anything that might be considered controversial involving Mr. Sherwin nor does she have knowledge of anything in his past that could cause embarrassment to any future employer.

Given the chance, Ms. Reed would definitely hire Mr. Sherwin as a City or County Attorney. She was disappointed when he did not apply for the position in Polk County when it became available halfway through her term. She speaks very highly of him.

Words or phrases used to describe Philip Sherwin:

- Likeable,
- Hirable, and
- Good communicator.

Strengths: Always available, and very knowledgeable in the law.

Weaknesses: None identified.

**Jonathon B. Trohn – Attorney, Valenti Campbell Trohn Tamayo & Aranda, Lakeland, FL
863-686-0043**

Mr. Trohn first met Mr. Sherwin in 2003. The County retains Mr. Trohn to do a fair amount of litigation; so he worked with Mr. Sherwin on a variety of issues.

Mr. Sherwin is a very good attorney with a fantastic grasp of legal issues. He maintains a good balance between the law and the political aspects of working for a public entity. He is extremely capable and has a varied law background with experience in many areas of law pertaining to any municipality.

Mr. Sherwin is first rate in how he responds. When he first arrived in Polk County the entire Utilities Department was a huge mess. Mr. Trohn was impressed with the way Mr. Sherwin dove right in and got to work. He brought the County into the next century and, under his

**Reference Notes
Philip N. Sherwin**

guidance, the County is now in full compliance with the DEP. He tackled a massive amount of consent orders against the County.

Mr. Sherwin is excellent at following up with Mr. Trohn. He always returns calls and gets the job done. Additionally, he solves problems and is very timely in accomplishing tasks. Furthermore, Mr. Trohn has made a point of building relationships with the Commissioners, so he knows they have all been very pleased with Mr. Sherwin. He is one of the workhorses of the County and one of the strongest members of their team.

Mr. Trohn has never observed Mr. Sherwin make any bad decisions when dealing with the law. He is even tempered and measured. Mr. Trohn has never seen Mr. Sherwin lose his temper. He is not impetuous and will not make decisions without thoroughly analyzing the situation first.

Mr. Sherwin negotiates well on behalf of the County and the Departments he represents. Mr. Trohn has been involved with him on various mediations and knows him to be a tough negotiator. He understands the implications of each issue and knows when a situation necessitates either going to trial or reaching a settlement.

Mr. Sherwin operates with a customer first attitude. He got along wonderfully with the elected officials, the County Manager, the staff, and the public at large. Mr. Trohn has never heard a single complaint about Mr. Sherwin in all the years he has known him.

Mr. Trohn is not aware of anything controversial or embarrassing in Mr. Sherwin's background. Given the opportunity, he would absolutely hire him. Mr. Sherwin is more prepared to take on a City or County Attorney role than any of the other talented attorneys Mr. Trohn knows who worked at Polk County.

Words or phrases used to describe Philip Sherwin:

- Reliable,
- Capable,
- Even keeled,
- Deliberate,
- Affable, and
- Congenial.

Strengths: A very good listener, easy to work with, and has a broad knowledge of the law.

Weaknesses: None identified.

**Reference Notes
Philip N. Sherwin**

Lisa Conran – Paralegal, Office of the Attorney, Polk County, FL 863-534-6435

Ms. Conran first met Mr. Sherwin when he came to the County in 2003. She was assigned to work directly for him from 2005 to 2015. They worked very closely on several issues involving the Departments he was responsible for within the County.

Mr. Sherwin is very knowledgeable and knows the law. He is thorough and detail oriented and handled two of the largest divisions in the County without any problems. He is an excellent negotiator, and he had a good working relationship with the Utilities Director and Division employees as well as any outside counsel the County employs from time to time.

Mr. Sherwin's strengths include his working knowledge of the County's governance system as well as his understanding of civil law. He was also an excellent teacher who took time to explain matters to Ms. Conran when needed. He was a very kind, understanding person, and she felt comfortable approaching him with any problem or issue. Additionally, he was level headed and listened to both sides of a situation before offering any advice.

Mr. Sherwin's work was very timely, and he was very responsive when dealing with both daily items and larger, more complicated issues. He made fantastic recommendations to the elected officials whether they like to hear his advice or not. He did not tell them what they wanted to hear just to appease them, but rather operated with the County's best interest at heart.

Mr. Sherwin is very thorough when making decisions regarding the law. He investigates every avenue and does not make snap decisions. If he does not know all the intricacies of an issue off the top of his head, he will do his research first, then follow up promptly.

Mr. Sherwin is experienced in many aspects of the law. He understands contract law and at one time handled all purchasing for the Solid Waste and Utilities Divisions. He frequently dealt with environmental law in conjunction with the Utilities Department and with surrounding counties on matters of water issues and permitting. He has experience with land use cases as he was the person in charge of reviewing the plats for the County.

Ms. Conran worked very closely with Mr. Sherwin and is quite involved with the workflow in the office. She always felt well informed of all the items and issues on their agenda. Although they did not field very many calls from the public at large because such issues generally go directly to the responsible division, when Mr. Sherwin was involved he was responsive and very personable.

Mr. Sherwin has never been involved in anything controversial other than the regular work related issues that come up for a County Attorney. He has not caused any personal controversy. If Ms. Conran were looking for a City or County Attorney, she would definitely hire Mr. Sherwin and very highly recommends him. He will be tremendous given his experience and how he operates as a team player even while he must give direction to others. He will bring a positive attitude to the organization and any municipality hiring him will not be disappointed.

**Reference Notes
Philip N. Sherwin**

Words or phrases used to describe Philip Sherwin:

- Smart,
- Detail oriented,
- Kind,
- Willing to learn,
- Teacher, and
- Exceptional manager.

Strengths: Responsive and has a varied legal background.

Weaknesses: When he first came to the County, Mr. Sherwin was not very computer savvy, but he has definitely improved since that time.

Randy Mink – Assistant County Attorney, Polk County, FL 863-534-7679

Mr. Sherwin and Mr. Mink first met when Mr. Mink came to Polk County in 2006. Although they worked in separate departments, on occasion they had cause to interact on issues. As a new attorney, Mr. Mink was most grateful for his mentorship and his help in learning the ropes.

Mr. Sherwin is very capable and confident in his abilities as an attorney, but at the same time he is very personable and down to earth. As a young attorney, Mr. Mink did not feel intimidated by Mr. Sherwin because he always willingly offered help by not just providing him with the answers, but working through them to ensure full understanding of the required knowledge.

Mr. Sherwin is very responsive. Mr. Mink has never heard of any issue he had not taken care of. He is a talented problem solver and good at bringing the right people to the table to resolve and problems at hand. The County is an extremely hands-on organization in which employees are expected to respond promptly. Mr. Mink never heard any complaints against Mr. Sherwin with regard to customer service.

The Commissioners never questioned his advice when Mr. Sherwin made recommendations to the elected body. He was thoughtful in his approach to decisions and did not pass the buck, but rather dealt with them himself and takes care of all the assignments he is given.

Mr. Mink observed Mr. Sherwin in a few negotiation sessions promoting items on behalf of the County. He is an excellent negotiator.

Mr. Sherwin is very experienced in various aspects of the law. He has vast knowledge of contracts, utilities, land use, and environmental law. When he first came arrived he inherited several issues with the Southwest Florida Management District (SWFMD) and the Department of Environmental Protection (DEP). He resolved all the problems and, by applying his expertise, brought the County into compliance. Additionally, as part of his duties he reviewed all of the land use plats for the County.

**Reference Notes
Philip N. Sherwin**

Mr. Mink was always well informed by Mr. Sherwin and received timely updates on all changes. He is customer service oriented and always worked hand in hand with the County Manager's office to keep the County Manager updated on matters under his jurisdiction.

Mr. Mink does not know of any controversies involving Mr. Sherwin, nor is he aware of anything embarrassing in his background. He will be an excellent City or County Attorney. Mr. Mink would hire him if he were looking for someone to fill such a position.

Words or phrases used to describe Philip Sherwin:

- Personable,
- Hands on,
- Leader,
- Knowledgeable of the law, and
- Likeable.

Strengths: Excellent knowledge and control of the law, and is first rate at handling many different types of personalities.

Weaknesses: None identified.

Todd Dantzler – Commissioner, Polk County, FL 863-534-6422

Mr. Dantzler first met Mr. Sherwin when he was elected to the Board of Commissioners in 2010. They served together on a few RFP's which Mr. Sherwin brought before the Board for review.

Mr. Sherwin is quite a capable attorney and was very competent at his job. He did a wonderful job of explaining issues to those who do not have a legal background and who might otherwise get lost in the technical jargon.

The County Attorney ran a tight ship, and Mr. Sherwin did a fabulous job of responding to requests and issues in a timely manner. Mr. Dantzler has never known him to drop the ball in his area of responsibility.

As they worked together on RFP's with a few members of the public Mr. Dantzler has never heard anyone complain about Mr. Sherwin regarding to how he interacts with community members. Additionally, he is customer service oriented, especially with the Commissioners. He is friendly and had good rapport with each of them.

Mr. Dantzler is not aware of anything controversial or embarrassing concerning Mr. Sherwin. Mr. Dantzler would hire Mr. Sherwin. He will do quite well as a City or County Attorney.

**Reference Notes
Philip N. Sherwin**

Words or phrases used to describe Philip Sherwin:

- Steady,
- Calm,
- Confident, and
- Pleasant.

Strengths: Has a very calm demeanor, and is not an excitable person.

Weaknesses: None identified.

Bill Beasley – Deputy County Manager, Polk County, FL 863-534-6429 863-370-4876

Mr. Beasley was hired in Polk County in 2006 and he worked with Mr. Sherwin until 2015. They interacted on an almost weekly basis on issues related to large County government functions. Polk County is the third or fourth largest County in Florida.

Mr. Beasley is an engineer by training and they worked very well together. Mr. Sherwin was assigned to support infrastructure divisions like Public Works. He dealt with contracts, policies, decisions, and issues related to Florida statutes. He could see the end game and help others navigate to where they needed to be. He quickly grasped what they were trying to accomplish and told them the upside and downside of each option they considered and what the consequences would be. He did a great job and did not involve himself in policy decisions.

Mr. Sherwin asked the department heads to not press him for a decision when research was needed. Mr. Beasley sometimes wanted an immediate answer and his expectations were not always realistic. Mr. Sherwin achieved a good balance between being responsive and being thorough. He always kept others informed.

At times they loved Mr. Sherwin's recommendations but other times they did not. He provided good, solid, legal advice even when it was not the answer they wanted. Mr. Beasley is not aware of any recommendations made by Mr. Sherwin to the elected officials that they did not follow, but if any existed they were not devastating to the County.

Mr. Sherwin was not the lead negotiator in Polk County but he was an advisor to the team. He provided good counsel for policy decisions and contract negotiations. He has experience in constitutional law, contracts, environmental law, land use, and utilities. He occasionally provided advice on labor or personnel matters but his main focus were matters related to infrastructure.

Mr. Sherwin attended meetings with Mr. Beasley. Mr. Sherwin advised the standing committees on Florida sunshine laws and records requests. He did not have occasion to interact with the public a great deal. When he had the opportunity he was not flamboyant but gave information in a straightforward manner.

**Reference Notes
Philip N. Sherwin**

Mr. Sherwin interacted directly with department heads on infrastructure contract matters, agreement matters, and matters between local governments. His involvement with staff level issues was much more frequent than his interactions with the elected body. He is very good at local government law.

The character of Mr. Sherwin is impeccable and as such he has not been involved in anything controversial. He has dealt with one or two items at the local government level that were sensitive from a public policy perspective but none of them rose to the level of a media scandal. He managed contract disputes and claims.

Mr. Sherwin would excel as the City or County Attorney of a small progressive municipality with good open communication. His disposition is as not well-suited for a city like Chicago or Los Angeles. Everyone that Mr. Beasley knows views Mr. Sherwin in a positive light.

Words or phrases used to describe Philip Sherwin:

- Knowledgeable,
- Personable,
- Builds a relationship of trust with his client,
- Treats others with respect,
- Cautious,
- Practical,
- Fair, and
- Realistic in how to manage local government affairs from a legal perspective.

Strengths: Foresight, really analytical thinker, did great research, good with contract law.

Weaknesses: His job was not to be involved in policy decisions and he did not become involved even when Mr. Beasley wanted him to.

**Jeff Spence – Parks & Natural Resource Director, Polk County, FL 863-534-7377
863-559-9248**

Mr. Spence has known Mr. Sherwin for a number of years and cannot recall when they met. Mr. Sherwin was the Assistant County Attorney assigned to Parks & Recreation. Mr. Spence handled drainage issues throughout Polk County and managed 84 parks. He also handled aquatic and mosquito control, and water quality. He worked primarily with Mr. Sherwin.

Mr. Sherwin did great work for Polk County. He was enjoyable to work with because he was very professional and extremely calm. When something happens he does not immediately make a judgment but looks at the issues and the options. He is easy to talk to about any topic.

**Reference Notes
Philip N. Sherwin**

Mr. Spence has offices all over the County but his primary office is near Bartow so he often stopped by to talk to Mr. Sherwin in person. Mr. Sherwin was always available even without an appointment. They also spoke on the phone.

Mr. Sherwin solves problems. His recommendations to the elected body were good and everything he worked on had a positive outcome. He reviewed documents from a legal perspective and modified them as needed.

Mr. Spence cannot recall a recommendation made by Mr. Sherwin that was not accepted by the elected body. He tries to find solutions that adhere to the laws and statutes. He did not ignore those who were breaking the rules but he was willing to work with them to find a solution within the legal constraints.

Mr. Spence can only confirm Mr. Sherwin's legal experience on matters in his area of responsibility, which were primarily environmental law and utilities. Mr. Sherwin cares about the environment and liked working on those issues. He kept everyone well informed. He attended some public meetings and contributed to them, but he did not work with the public on a routine basis. All of Mr. Spence's dealings with Mr. Sherwin were good.

Mr. Spence is not aware of anything controversial that involves Mr. Sherwin either personally or professionally. He is definitely one to consider for a City or County Attorney position.

Words or phrases used to describe Philip Sherwin:

- Calm,
- Thorough,
- Pleasant,
- Intelligent,
- Nice person, and
- Environmentally conscious.

Strengths: His principal strength is thoroughness. Does not jump to conclusions. Very mild mannered and pleasant to work with.

Weaknesses: He was in charge of many divisions and had to prioritize. Sometimes Mr. Spence's items did not have the highest priority. However this is not a personal weakness of Mr. Sherwin, it related more to the vast quantity of work in a very large County.

Prepared by: Lynelle Klein and Heather Linares
Colin Baenziger & Associates

Section 4

CB&A Internet Research

Internet – Newspaper Archives Searches
Philip Sherwin
(Articles are in reverse chronological order)

Ledger, The (Lakeland, FL)
August 30, 2010

ALLIANCE FOR INDEPENDENCE has announced its 2010-11 board of directors and officers. They were elected at the annual board of directors meeting earlier this month. They are: chairman, Ron Losch, retired from Publix; chairman elect/chairman, performance oversight monitoring committee, Scott Sloman, The Lakeland Center; secretary and chairman, external relations and resource development committee, Bart Ross, TMR Agency; treasurer/chairman, audit committee, David R. Ramos, CPA; chairman, planning and program development committee, Andrew Hernan, Griffin Pools Inc.; Jennifer L. Adams, Bank of Central Florida; Carol N. Asbill, Publix Super Markets; John C. Burton, Sun 'n Fun Inc., immediate past chairman; Deborah Heatherley, Publix Super Markets; Timothy Kiley, Peterson & Myers, P.A.; Charles Lake, retired; Sherrie D. Long, Allen & Company; Philip Mowry, Florida Southern College; Jim Rehberg, J-Reh, Inc.; Sena E. Schirm, SunTrust Bank; Anthony J. Senzamici Jr., Pioneer Medical Company; Tom Patterson, Saddle Creek Corp.; Anne-Marie Wendel, Lakeland Police Department; William H. Wheeler Jr., Wheeler & Wheeler, Inc.; Richard Wills, FITniche.

ASHLEE'S HAIR STUDIO has been remodeled. Address is 720 Honeycomb Lane, Auburndale. Phone number is 863-412-8716. Owner is Ashlee Sam.

ANDY BALDAUF, formerly a branch manager for CitiFinancial, has joined the staff of Home Solution Title in Lakeland as a market representative. He has a bachelor's degree in marketing management from Webber International University in Babson Park.

BCI ENGINEERS & SCIENTISTS INC., a Lakeland-based engineering firm, has made the list of Engineering News-Record's Top 200 Environmental Firms. This is BCI's first time on the list, ranking 196 out of 200 with reported revenue of \$18.4 million for its environmental services.

BOARD OF LEGAL SPECIALIZATION & EDUCATION has certified the following Polk County lawyers as specialists: K.C. Bouchillon, Bartow, business litigation; **Philip Sherwin**, Bartow, Mark Sessums, Lakeland, Sherri Scarborough, Winter Haven, all city, county, and local government law; Laura Lynn Newlin, Lakeland, real estate.

BETSY CÉNÉUS, P&C marketer at Lanier Upshaw, has been received the insurance designation of registered professional liability underwriter by the Professional Liability Underwriting Society.

KATHRYN KOCH, vice president of Lanier Upshaw, attended a personal insurance seminar conducted by Ohio National Financial Services in Cincinnati on Aug. 16-19. Training focused on product information, marketing, sales ideas, business planning and best business practices.

FLORIDA FFA has announced the 2010 FFA Hall of Fame inductees. They are Elton L. Hinton, deceased, William R. Jeffries, Fenwick D. McCormick, Floyd Lorrain, Janice Culligan Northrop,

Internet – Newspaper Archives Searches
Philip Sherwin
(Articles are in reverse chronological order)

deceased, and Daniel Eugene Ryals Jr. They will be inducted during the fourth-annual awards celebration Oct. 5 at the Florida FFA Leadership Training Center in Haines City.

LEADERSHIP POLK has announced members of Class IV. They are: Rodney Carson, Central Florida Development Council; Susan Copeland, Polk Education Foundation; Michael Craig, Polk County Board of County Commissioners; TR Croley, City of Frostproof; Mike DeNeve, Mosaic; Kay Fields, Girls Inc. of Lakeland; Dorsey Hightower, Hightower Veterinary Services; Tim Jackson, Nujak Companies; Janice T. Jones, The NCT Group; Kelly Lane, Boys & Girls Club of Lakeland & Mulberry; Carl "Ed" Locke Jr., SEMCO Construction; Robert Loftin, BB&T Bank; Ed Lunz, Lunz Prebor Fowler Architects; Alex Mahalak, Dodge-Chrysler-Jeep of Winter Haven; Carole McKenzie, Clear Springs; Jenn Montague, Fantasy of Flight; Tonja Mosley, Heart of Florida Regional Medical Center; Bill Mutz, Lakeland Automall; Cindy Price, TECO; David Price, Bok Tower Gardens; Alan Rayl, Rayl Engineering and Surveying LLC; Don Selvage, SHR Human Resources LLC; Donna Sheehan, City of Winter Haven; Shawn Sherrouse, City of Auburndale; Scott Smith, Florida's Natural Growers; Monti Sommer, AMIkids Polk; Lana Swartzwelder, St. Joseph's Academy; Deena Ware, City of Fort Meade; Reggie Webb, Polk State College; Matt Werd, Foot and Ankle Associates; Bobby Yates, Lakeland Volunteers in Medicine. Nelson Kirkland, Leadership Polk Class I graduate and founder of the Central Florida Media Group, will serve as chairman for Class IV.

INNA MARKOVSKY has been named salesperson of the month for July at Southern Homes of Polk County.

KERRY NIKOLAISEN has joined BCI Engineers & Scientists as senior hydrogeologist for its St. Louis Office. BCI is based in Lakeland.

SARA OLSON has joined the American Red Cross Mid-Florida Region as chief fund development officer for the Polk County Chapter. She has more than six years of experience with nonprofits.

LESLIE OWEN has been named employee of the month for September at Waller Construction.

CHAS P. SMITH, CPA/PFS, president of CPS Investment Advisors, was a guest speaker at the Florida Institute of CPA's Financial Planning Conference in Tampa. His topic was "Importance of Dividends in Stock Investing."

KIMBERLY WYANT has joined the staff at Michael Rose Hair Designs.

Internet – Newspaper Archives Searches
Philip Sherwin
(Articles are in reverse chronological order)

Ledger, The (Lakeland, FL)
July 13, 2007

ZONING PROPOSAL DRAWS QUESTIONS; WAVERLY

Author: *TOM PALMER The Ledger*

BARTOW - A zoning proposal intended to promote the revitalization of a shuttered citrus-packing plant in Waverly encountered questions from community residents and the Polk County Planning Commission.

Commissioners voted unanimously Tuesday to approve a less-ambitious change, leaving the rest to an area-wide planning study that's in the offing.

The case before the commission involved a proposal by Waverly Growers Cooperative to remap 47 acres on and around the former packinghouse to promote industrial development.

Waverly shut down the plant in 2005 after major acreage owned by growers who supplied fruit to the plant was sold for development.

Lawyer Jack Brandon argued the request corrects an error on the growth map that depicts the land around the plant as the site of heavy commercial development.

County planners recommended denial because the proposal doesn't match the county growth plan's limits on the location of new industrial zoning. The plan requires new industrial land to be within a half-mile of major highways. This property is three-quarters of a mile from U.S. 27.

Residents from the community showed up to oppose the proposal, arguing they had not been adequately consulted and were concerned that the additional industrial development could leave them with no evacuation route from their homes in case of an accident in the industrial area.

"We'd like an independent study of the environmental and traffic impacts," said resident Felix Baker Jr.

But John Husted, Waverly Growers' general manager, said they were simply looking for a way to renovate and market the property to a business interested in warehousing and distribution or light industrial facilities.

"We don't want to be bad neighbors," he said, promising to work to make land available for alternative routes to the residential areas to relieve residents' safety concerns.

Planning Commissioner Ellis Hunt Jr., who is in the citrus business, said he supported what Waverly Growers was trying to do.

Internet – Newspaper Archives Searches
Philip Sherwin
(Articles are in reverse chronological order)

"The packinghouse was the cornerstone of this community and can be again," he said. "This is a great opportunity that is really important to work out."

Planning Commissioner Barbara Douglas agreed.

"The area's economically depressed," she said.

Douglas tried to win approval of Waverly's complete proposal even though Assistant County Attorney **Phil Sherwin** warned that it was inconsistent with the county's growth plan.

Her motion failed.

Planning Commissioner John Langford proposed a change that would alter the growth map to recognize the existing industrial land, but not the proposed expansion.

That motion passed.

County planner Chanda Bennett told commissioners a special planning study that also will include the area east of Dundee will examine future land uses in Waverly and will bring back a comprehensive recommendation that could yield a proposal for the kind of expansion Waverly Growers is seeking.

That study is just beginning and it will likely take more than a year to complete, she said.

Internet – Newspaper Archives Searches
Philip Sherwin
(Articles are in reverse chronological order)

Ledger, The (Lakeland, FL)
January 27, 2007

POLK NEEDS WATER BOARD REPLACEMENT

Author: *TOM PALMER The Ledger*

BARTOW - Polk County needs to continue to have a strong representative on the Peace River Basin Board, members of the Water Policy Advisory Committee agreed Friday.

Committee member Roger Griffiths raised the issue in connection with an upcoming vacancy on the six-member board.

The current Polk representative is Ann Dunlap of Bartow, who was appointed in 2001, replacing Jim Moore of Indian Lake Estates. Her term ends March 1.

Dunlap said Friday she supports the committee's intent.

"Water is the most important issue facing all of Florida, especially Polk County," she said, explaining Polk is too far upriver to be able to tap water from the Peace River and too far from the coast to use desalination.

She said whoever is appointed needs to be willing to put in a lot of time educating himself or herself and be someone who understands Polk's water issues.

"I hope whoever is appointed feels that way," she said.

The Peace River Basin Board levies property taxes to pay for local water projects in Polk, Hardee, Highlands, DeSoto and Charlotte counties. The current budget is \$16 million.

The money pays for local projects ranging from efforts to solve local flooding to water conservation and stormwater treatment.

Basin board members, who serve without pay, are appointed by the governor and confirmed by the Florida Senate. They typically are limited to two three-year terms, Griffiths said.

Griffiths said he was supporting Steve Enzor, a member of the Lake Region Lakes Management District board, commonly known as the Canal Commission.

County officials tried unsuccessfully to persuade the governor's office to name Enzor to the board in 2001. The plan was to seat him in the at-large seat - each county is guaranteed one seat - in an effort to increase Polk's influence on the board.

Then-Gov. Jeb Bush appointed someone from Charlotte County instead.

Internet – Newspaper Archives Searches
Philip Sherwin
(Articles are in reverse chronological order)

It is unclear whether Enzor could be appointed to the Peace River Basin Board without first resigning from the Canal Commission because of a state law against dual office holding, said Assistant County Attorney **Phil Sherwin**.

Sherwin said he will research the issue and give committee members a formal opinion next week.

Griffiths said he thinks local officials should become involved to guarantee Dunlap's replacement represents local interests.

"If we don't, it will be some kind of political appointment, and the water management district may have more input into who that person might be," he said.

Committee member Gene Engle said other nominees may be easy to attract, given water's importance locally.

"The issue is more visible now than it was five years ago," he said.

Dunlap's appointment isn't the only local seat scheduled to expire soon.

Also expiring March 1 is the seat held by Steve Bissonette of Lakeland on the Alafia River Basin Board. He has served only one term.

Although the Southwest Florida Water Management District Governing Board doesn't involve appointments from Polk County, the terms of two members, Jerry Rice of Dade City and Judy Whitehead of Brooksville, will expire March 1 as well.

Natural Resources Director Jeff Spence said his staff would be willing to provide information to anyone interested in applying for the Peace River Basin Board seat. Interested candidates can call 863-534-7377 for more information.

Tom Palmer can be reached at 863-802-7535 or tom.palmer@theledger.com.

Internet – Newspaper Archives Searches
Philip Sherwin
(Articles are in reverse chronological order)

Fort Meade Leader, The (FL)
June 12, 2003

Polk Hires Two New County Attorneys

Author: *Staff Writer*

Polk County commissioners agreed to hire two new assistant county attorneys at salaries of \$54,000 each, but Commission Chm. Randy Wilkinson said the county attorney's budget is growing too fast.

At the recommendation of County Atty. Joe Jarret, the commission approved starting salaries of \$54,000 for two lawyers hired at the Attorney I level, the lowest rank on the newly-approved pay plan for lawyers hired by the county.

Wilkinson said that the county attorney's budget has increased by 18.77 percent the highest of any department in county government.

Jarret replied that the problem is the cost of lawyers hired to represent indigent defendants, not the cost of his own staff.

"We're currently skirting malpractice with the caseload we're handling," Jarret said, adding that Polk hires fewer lawyers than other counties of comparable size.

Commissioners approved the contracts over Wilkinson's objection, with Commissioners Neil Combee, Charles Richardson and Don Gifford voting for them. Commissioner Jack Myers was not present for the vote.

The new lawyers are **Philip N. Sherwin** and Ngozichukwu C. Acholonu.

Research Compiled by: Lynelle Klein
Colin Baenziger & Associates

City Commission Special Meeting, 1:30 pm

Meeting Date: 03/10/2016

Re:

Information

SUBJECT:

James M. Messer

Attachments

Messer

Form Review

Form Started By: Linda Cox

Final Approval Date: 03/08/2016

Started On: 03/08/2016 11:50 AM



Section 2

James “Jim” M. Messer

*Fort Pierce City Attorney
Candidate Report*

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Resume

JIM MESSER

125 S. Alcaniz Street, Suite 1
Pensacola, Florida 32502
(850) 266-4641 (cell)
Email – messerlaw@att.net

CAREER SUMMARY / LEGAL PHILOSOPHY

More than fifteen years of local government experience representing both city and county governments with expertise in the following areas:

- The economical and efficient operation of private and public sector law offices and teams of multiple attorneys, multiple paralegals and multiple support staff
- The successful co-ordination of department heads in order to resolve both legal and policy issues in a manner consistent with the goals of the public sector organization
- The economical and efficient management of budgets ranging from a quarter of a million dollars to over a million dollars per year
- The institution of both accessibility and transparency protocols to ensure that elected officials and Department heads received timely legal counsel, feedback and cooperation
- The ultimate authority in public sector organizations to ensure compliance with the Public Records and Sunshine laws
- Able to render advice on high level, complex policy decisions in a politicized atmosphere that is subject to public discourse and reporting by an increasingly fractious press and public

My leadership philosophy is to ensure that whatever goal policy the political entity desires is obtained thru a harmonious relationship with the City Manager and the Department heads. As a leader with demonstrated legal, organizational, analytical and communications skills, I believe that public sector initiatives can only be successfully achieved if the attorney is accessible, involved and committed to the City Manager and Department heads. The City attorney must be productively involved on a daily basis with the diverse group of people that make up the work force, achievement-oriented with experience, judgment and integrity and a dedicated team player who is able to work independently as well as within an organizational framework.

My litigation philosophy is to control the outcome and costs of litigation. I work very diligently to ensure that the position of the political entity is clearly acknowledged at the outset of the case and that a theory is developed that will lead to either a successful litigation or settlement. I understand that the continual stress of litigation and the resultant publicity can take an enormous toll on the morale of elected officials and adversely affect their ability to conduct public business. I also understand that the City needs to provide services to the taxpayer and that every penny spent on litigation is a penny that cannot be directed to the provision of City services.

My legal philosophy on policy issues is to ensure that I include all interested parties in the discussion, am transparent in my reasoning and accessible to anyone who has a legitimate stake in the outcome. I make every effort to reach out to knowledgeable attorneys and managers in other jurisdictions and ensure that every reasonable step is taken to avoid potential pitfalls in both the Implementation of the policy as well as any potential legal challenge. I consider it part of my job to support the City Manager and Department Heads in every reasonable way possible.

DIRECTLY RELEVANT LEGAL EXPERIENCE

- City Attorney, Pensacola, FL** 2010 - 2014
Served as the contract City Attorney for Pensacola, Florida for the first Mayor elected under a new charter and also handled municipal litigation on behalf of the City. Acted as legal counsel and advisor for the City and all of its elected officials in all matters relating to their official powers and duties. Attended all regular and special meetings of the City Council. Prepared and reviewed all City contracts, ordinances and resolutions. Provided legal opinions to the Mayor and Council. Represented the CRA.
- Chief Litigation Attorney, Escambia County Attorney's Office, Pensacola, FL** 1993 – 2001
Represented Escambia County in the prosecution and defense of lawsuits brought by or against the County including torts and contracts, labor and employment, construction contracts, civil rights, insurance and workers' compensation matters.

OTHER PROFESSIONAL LEGAL EXPERIENCE

- Messer Law Firm, P.A.** 2005 – Present
Plaintiffs' attorney for personal injury litigation, construction law, commercial law, county/municipal government law, Federal criminal defense. Also served as City Attorney for the City of Pensacola.
- Trial Attorney, Levin, Papantonio Law Firm, Pensacola, FL** 2001 – 2005
Plaintiffs' attorney for mass torts and personal injury litigation.
- U.S. Staff Attorney Department of Justice, Criminal Division, Washington, D.C.** 1991 – 1993
Prosecution of complex drug conspiracy and continuing criminal enterprise cases.
- Associate Attorney, Markel, McDonough & O'Neal, Orlando, FL** 1988 – 1991
Defense of construction, personal injury and product liability litigation.
- Judge Advocate Attorney, United States Marine Corps** 1974 – 1988
Prosecution of felony cases and defense of employment discrimination cases for the Department of the Navy with national media interest.

BAR MEMBERSHIPS

State Bar of Florida	United States Court of Appeals for the First Circuit
State Bar of Alabama	United States Court of Appeals for the Eleventh Circuit
State Bar of West Virginia	United States District Court for the Northern District of Florida

CERTIFICATIONS/APPOINTMENTS

Florida Board Certified in Civil Trial	1997 - Present
County Rezoning Hearing Examiner	
Special Magistrate for Code Enforcement	

LEGAL EDUCATION

Juris Doctor, West Virginia University	Master of Law (Labor), George Washington University
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UNDERGRADUATE EDUCATION

Bachelor of Arts, Political Science, West Virginia University

SOME OF MY REPORTED CASES

Bernal, Inc. v. Greystone Property Management, LLC, 2011 WL 1087485 (Alabama Supreme Court), Commercial real estate dispute.

Simms v. Meredith, 967 So. 2d 393 (Fla. 1st DCA 2007).

Status of Writ of Garnishment as an initial nonenforceable civil process pursuant to section 48.021, Fla. Stat.

Frankenmuth Mutual Insurance Co. v. Ernie Lee Magaha, et al., 769 So. 2d 1012 (Fla. 2000). Contract ratification, effect of a non-substitution clause in a multi year lease agreement.

GJR Investments, Inc. v. County of Escambia, Florida, 132 F.3d 1359 (11th Cir. 1998). Successfully defended 42 U.S.C. §1983 suit brought following denial of permit for RV Park; qualified immunity.

Paedae v. Escambia County, 709 So.2d 575 (Fla. 1st DCA 1998). Successfully defended 42 U.S.C. §1983 and state tort claims.

Junior v. Reed, 693 So.2d 586 (Fla. 1997).

Successfully defended 42 U.S.C. §1983 action alleging slander and the consequent economic loss to a business.

Sears v. Department of the Navy, 680 F.2d 863 (1st Cir. 1982).

Precedent setting case limiting a public sector union employee's right to representation.

Candidate Introduction

EDUCATION

Bachelor of Arts
Juris Doctorate
Master of Law (Employment)

RELEVANT EXPERIENCE

Self Employed	2005 – Present
City Attorney, Pensacola, Florida (Contract with Messer Law Firm)	2011 – 2015
Chief Litigation Attorney, Escambia County, Florida	1993 – 2001
Board Certified Civil Trial Attorney	1997 – Present
Honorable Discharge USMC	

BACKGROUND

Escambia County, Florida is the westernmost county in the state of Florida. The population is about 300,000 people. The county has a total area of 875 square miles of which 656 square miles is land and 218 miles is water. A five member Board of County Commissioners, each commissioner representing one of five districts, leads the government.

I commenced my legal career in the City of Pensacola, Florida, the county seat of Escambia County, Florida in November of 1993 as the Chief Litigation Attorney of Escambia County and have consistently practiced law there up to the present date. I served Escambia County in that capacity for about a decade, moved to a large Plaintiff's firm and then formed my own solo practice. I also opened an office in Birmingham, Alabama in order to expand my market. Currently, I am licensed to practice law in the states of Florida, Alabama and West Virginia. Neither my law firm nor myself have ever been the subject of a malpractice claim, ethics complaint or client complaint.

The County Attorneys office consisted of a County Attorney, six assistant County Attorneys and myself as Chief Litigation Attorney. At all times there were about two paralegals, eight legal secretaries, a receptionist and a budget analyst. In the absence of the County Attorney, I was appointed as acting County Attorney to manage the office. The office was a diverse office.

I supervised the paralegals, a legal secretary and the assistant County attorneys when they were assigned either a litigation project or a project that involved a complex issue of state or Federal statutory or constitutional law. I was the lead attorney on all complex litigation involving the County, including tort, contract, state and Federal constitutional law claims workers compensation, land use and employment issues.

James M. Messer

Several of the reported cases I handled on behalf of the County are set forth on my resume. Those cases were eventually resolved, in favor of the County, in either the Eleventh Circuit Court of Appeals, on the Federal level or the First District Court of Appeals, on the state level.

Some of those cases involved serious constitutional law issues that exposed a sitting Commissioner to personal legal liability in the form of damages and attorney fees. I take particular pride in the fact that in each and every case where a Commissioner was exposed to personal liability, that Commissioner had the faith and confidence in my legal abilities to select me to personally represent him or her, rather than seek outside counsel. Those same elected officials, as well as some of them who were subsequently elected to fill their seats, have continued to seek my legal counsel and representation.

The City of Pensacola, Florida is the westernmost city in the Florida panhandle. The city has a total population of about 50,000 people. Pensacola is a seaport on Pensacola Bay, which is protected by the barrier island of Santa Rosa and connects to the Gulf of Mexico. A Naval Air Station is located southwest of Pensacola and the main campus of the University of West Florida is situated north of the city center. The city is located on the north side of Pensacola Bay, and has a total of 40.7 square miles of land, consisting of 22.5 square miles of land and 18.1 square miles of water.

The City of Pensacola owns and operates an international airport, an international seaport and a natural gas company.

The City is governed under a brand new charter that the voters approved in order to establish the executive office of a strong Mayor. Prior to the new Charter the Mayor was a voting and sitting member of the City Council. The new Charter realigned most of the powers of the City Council to the office of the Mayor. The City Council remains the legislative body of the City, with the Mayor having a veto power over all ordinances, resolutions and line items in the budget.

As a direct result of the new Charter, the City of Pensacola outsourced the office of the City Attorney and my firm was selected to represent the City, as City attorney, by the first strong Mayor. The new Charter radically transformed the structure of government in Pensacola. I was privileged to serve in the capacity of City Attorney pursuant to a four-year contract, while at the same time I retained my private practice.

As City attorney, I handled, with the occasional assistance of outside counsel, all the city's legal matters. My staff was composed of two assistant city attorneys, one paralegal and a receptionist. I was responsible for supervising several outside attorneys that the City had previously retained to handle bond matters, environmental matters and labor matters.

For the most part, my office faced the same challenges that many cities in Florida face, growth and development, code enforcement, tort litigation, contract litigation, personnel issues and constitutional law. The one exception in Pensacola was the almost daily allegation of violations

of the Public Records Act and the Sunshine law, as well as continual legal challenges to the implementation of the new Charter. Most of those challenges were either from a group of citizens that had actively, vociferously and endlessly campaigned against the new Charter or a group of citizens who were displeased in the manner in which the Charter was implemented.

The Courts rejected each legal challenge to the Charter and the Mayor's executive powers, including the veto power. Steering the City thru the tangled mess of legal challenges to the Charter and the Mayor's authority required me to review issues with an open mind and apply the law aggressively in order to accomplish what was best for the City under the terms and conditions of the new Charter. I had to think outside the box, research new ways to resolve situations and work hard to find a solution to challenges under what was, essentially, a new contract between the citizens and their government.

The most difficult aspect of the job involved maintaining the ethical and legal balance between the Mayor, who hired me, and the City Council, who I had a Charter duty to advise. As a result of my recommendations, as well as the virtual impossibility of serving two clients with adverse interests, the City Council now has the power to hire its own attorney.

During my four-year term, I successfully defended the new City Charter in several lawsuits and appeals. Additionally, I successfully defended the City against a Federal lawsuit filed by Occupy Pensacola. Occupy Pensacola took the position that all public property belonged to the people and that they could occupy public land for an indefinite period of time. At one point, there were over four hundred people camped outside City Hall. The issue involved complex First Amendment and Federal procedural issues that were favorably resolved for the City after two trips back and forth between the trial court and the Eleventh Circuit Court of Appeals.

GENERAL, MANAGEMENT STYLE AND EXPERIENCE

In my opinion, the City of Fort Pierce needs a City Attorney who has an excellent litigation skill set, the ability to create and lead an office, contribute in a positive manner to the organization, understands the importance of diversity and can be an Ambassador of the City to the taxpayers. I would submit that my certification as an expert civil trial attorney, demonstrated leadership ability and success at every level of public and private endeavor fits the bill.

I believe the chief responsibility of a City Attorney is to represent the City in a timely, efficient, professional manner in order that the City can obtain the best legal or policy result possible in any given situation. A city attorney must render advice on high level, complex policy decisions in a politicized atmosphere that is subject to public discourse and reporting by an increasingly fractious press. Implicit in the role is the necessity to ensure that the advice and counsel are digested, coordinated and accepted by the various staff and departments that may be affected.

James M. Messer

My management style is to remain calm in the face of adversity, think and act reasonably and responsibly, be open and approachable and have a can do attitude. It is imperative to keep all Commissioners equally informed, say the same thing to each member, as well as communicate regularly with both the City Manager and the City Commission. I would hope that the City Manager would take advantage of my experience and seek my professional advice on policy and management decisions. My door is all ways open to any Department Head. I firmly believe that government wins and loses as a team.

My approach to lawsuits is to make recommendations and decisions based on the law, as well as what is the right thing to do. There is a tremendous amount of discretion in the actions of the City and I would hope that discretion would be utilized to make Fort Pierce the best city to live, work and play in the State of Florida. If something cannot be done legally, I will ensure that the appropriate advice is rendered in a manner that does not undermine the position of the City, should the Council decide it wishes to pursue a different course. I am an advocate of the speak softly, but carry a big stick approach. My courtroom experience is a big stick. On the other hand, the City is not in the business of litigation and the taxpayer's money can be spent for numerous worthy municipal purposes. I believe in the prompt, fair resolution of all lawsuits brought against the City. Settlement is my paramount aim in order to save time, money, expense and eliminate adverse publicity to the City. On the other hand, sometimes it is necessary to go to the Courthouse in order to ensure that other attorneys understand that the City is not low hanging fruit to pick at their leisure.

In order to keep elected officials informed, I prefer either office meetings or out of office coffee on a regular basis. Should there be an important addition or change in the law that affects the City, I would communicate that via e-mail to all concerned.

In the first six months, I would envision the creation of a legal office of at least one or two assistant city attorneys and one paralegal/receptionist. The size of the office is a delicate balance between over lawyering and providing accurate, responsive legal support and is really determined by how much legal service is needed by the City. I would hope that the majority of the litigation and settlement of lawsuits could be handled in house.

The only qualification for employment in my office is merit. Everyone is given clear direction on the job requirements from both an ethical and business standpoint. Follow up management is provided on a daily basis. I have never had to fire an employee, but I have been involved in numerous termination lawsuits and decisions on behalf of clients.

My strengths are organization, judgment, integrity and experience. I am able to work with and motivate staff, am a good listener, cooperative and have common sense.

I have never really dwelled on my weaknesses but I suppose my biggest weakness would be my assumption that everyone is motivated to do the right thing for the right reasons.

James M. Messer

My greatest achievement is the creation of my own law firm and the consequent ability to make a living, create jobs for other people and contribute to the community.

I would prefer that the public affairs department handle the media in order to ensure that a consistent message is portrayed; however, I am not averse to speaking with the media in order to advance the interests of my client. I believe the key in dealing with the media is to educate the media on the issues in order to ensure accurate, quality coverage for the City and maintain the integrity of the process.

I don't believe there is any "dirt" on anything or me that would embarrass the City. There are consistent Pensacola bloggers who either don't understand the powers and duties of the Mayor under the new Charter or believe that the Charter provided that I work exclusively for the Mayor, but I would hope those are philosophical differences and not personal.

In my leisure time I stay physically fit and enjoy reading fiction.

SIX ADJECTIVES OR PHRASES I WOULD USE TO DESCRIBE MYSELF

Experience, Integrity, Judgment, Common Sense, Approachable, Accessible, Dedicated.

I believe that any City Manager or County Administrator would say they considered me their best friend in the workplace.

RECENT SALARY

I was paid a fee of \$155,000.00/year to act as City Attorney with a separate litigation contract at \$255/hr.

CB&A Background Checks

**Background Check Summary for
JAMES "JIM" M. MESSER**

Criminal Records Checks:

Nationwide Criminal Records Search No Record Found

County

Escambia County, FL No Record Found

Jefferson County, AL No Record Found

Federal

Florida No Record Found

Alabama No Record Found

Civil Records Checks:

County

Escambia County, FL No Record Found

Jefferson County, AL No Record Found

Federal

Florida No Record Found

Alabama No Record Found

Motor Vehicle

Florida No Record Found

Credit

Excellent

Bankruptcy

No Record Found

Education

Confirmed

Employment

Messer Law firm (2005 – Present)

Escambia County (1993 – 2001)

Confirmed

Levin Papantonio Law Firm (2001–2005)

Verifications Pending

Bar Certification/License

Member in Good Standing

Bar #655880

**Background Check Summary for
JAMES "JIM" M. MESSER**

THE FLORIDA BAR



ABOUT THE BAR NEWS & EVENTS FOR THE PUBLIC MEMBER SERVICES **LOG IN** FIND A LAWYER

THE FLORIDA BAR Find A Lawyer Profile

James Michael Messer

Member in Good Standing **Eligible to Practice Law in Florida**

Bar Number: 655880

Mail Address: Messer Law Firm P. C.
Messer Law Firm P A
125 S Alcaniz St Ste 1
Pensacola, FL 32502-6004
United States
Office: 850-266-4641

Email: messerlaw@att.net

Personal Bar URL: www.floridabar.org/mybarprofile/655880

vCard: 

County: Escambia

Circuit: 1

Admitted: 05/18/1987

10-Year Discipline: None

History:

Law School: West Virginia University College of Law, 1974

Board Certifications:	Area	Year
	Civil Trial	1997

Firm: Messer Law Firm P. C.

Firm Size: One

Firm Position: Partner/Shareholder

The Find a Lawyer directory is provided as a public service. The Florida Bar maintains limited basic information about attorneys licensed to practice in the state (e.g., name, address, year of birth, gender, law schools attended, admission year). However, through this directory The Florida Bar allows individual attorneys the opportunity to provide for public information certain expanded personal and professional data. It is the attorney's responsibility to routinely review and update those expanded listings. The information contained in those expanded listings is presented by the Bar "as is" with no warranty of any kind, express or implied. The Florida Bar, its Board of Governors, employees, and agents thereof are not responsible for the accuracy of that additional data. Publication of attorneys' contact information within this listing should not be construed as their consent to receive unsolicited communications in any form. Certain unauthorized uses of this data may result in civil or criminal penalties. The Find a Lawyer directory is not a lawyer referral service.



**Background Check Summary for
JAMES "JIM" M. MESSER
Personal Disclosure**

02/05/2016 10:52

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THE UPS STORE 3425

PAGE 03

Personal Disclosure Questionnaire

Name of Applicant: JAMES M MESSER

The following questions are designed so that we will be able to make full disclosure to our client concerning your background. Please answer them honestly. Cutting corners or misrepresenting your past will result in you being eliminated from all further searches conducted by this firm. We understand that frivolous charges are sometimes made and that charges do not mean you were guilty. We also understand that you may have been wronged and needed to seek compensation. The bottom line is that we want to be certain that our client is fully informed. If you have any questions, please contact us for clarification.

Please explain any yes answers on a separate sheet of paper.

- 1. Have you ever been charged or convicted of a felony?
Yes No
- 2. Have you ever been accused of or have been involved in a domestic violence or abuse incident?
Yes No
- 3. Have you ever declared bankruptcy or been an owner in a business that did so?
Yes No
- 4. Have you ever been the subject of a civil rights violation complaint that was investigated or resulted in a lawsuit?
Yes No
- 5. Have you ever been the subject of a sexual harassment complaint that was investigated or resulted in a lawsuit?
Yes No
- 6. Have you ever been convicted of driving while intoxicated?
Yes No
- 7. Have you ever sued a current or former employer?
Yes No
- 8. Do you have a personal My Space, Face Book or other type of Web Page?
Yes No
- 9. Do you have a personal Twitter Account?
Yes No
- 10. Is there anything else in your background that, if made public, would cause you, our client or our firm embarrassment if it came to light through the press or any other mechanism?
Yes No
- 11. Please provide a list of any lawsuits in which you are or have been a party either as plaintiff or defendant.
N/A

Attested to: 
Signature of Applicant

Please email this form via PDF DOCUMENT to Kknutson@cb-asso.com or via fax to (888) 539-6531 **no later than 5:00 PM CST 02-08-2016.**
(Note: Please be sure to sign the form with your actual signature if you are sending Fax or PDF Document)

Property of Colin Decker & Associates

CB&A Reference Notes

Reference Notes
James M. Messer

Kris Elliott - Attorney, Gulf Breeze, FL 850-346-8177

Mr. Elliott is a military and maritime attorney. He bonded with Mr. Messer in 2005 because of their service as marines. Mr. Messer also represented Mr. Elliott in a medical lawsuit. Mr. Messer is an outstanding lawyer. His knowledge of the law is extensive enough that the majority of questions posed to him, he is able to answer. If he is not completely confident about the answer he does not pretend to know, but will research to find the answer.

Mr. Messer is extremely responsive. He is the type of attorney that other attorney's go to for advice. He is especially good at determining whether a conflict of interest is present in different situations. When his clients come to him wanting to do something that could potentially be illegal or at least ill advised, he quickly offers alternative solutions to help them meet their goal. He is open minded and does what he can to find other avenues for his client to be successful.

Working with the public is not a big deal for Mr. Messer because he has done it for so many years. He has worked cases at the federal level, where he did not show any intimidation but fought for his client. While in Pensacola he developed a positive relationship with the elected officials. He was responsive to their questions and gained their respect. At times they did not follow his advice, but he never took it personally.

The areas of the law that Mr. Messer has experience in, but not limited to, are: contracts, environmental law, land use and labor/personnel matters. In Pensacola a business owner wanted to build a facility at the maritime park. Unfortunately, due to environmental laws requiring a certain distance between structures and the water, the plans could not go forward. However, he provided them with an alternative location. Within land use, he developed options on how to expand the airport, which included purchasing more land to extend the runway and run off.

Towards the end of his time at Pensacola, Mr. Messer began having problems with the City Council. Due to the strong mayor form of government he worked for the mayor, but the Council wanted him to listen to them. He did not do anything to embarrass himself or the elected officials, but it became increasingly more difficult to stay out of the fray.

Mr. Messer is a terrific lawyer. He would do a great job as City or County Attorney, in fact it would be difficult to find anyone who could do it better.

Words or phrases used to describe Jim Messer:

- Family oriented,
- Physically active,
- Outgoing,
- Self-deprecating humor, and
- Straightforward.

**Reference Notes
James M. Messer**

Strengths: Honest, hardworking, dedicated, knowledgeable and ethical.

Weaknesses: Works too hard.

**Rob Larkin - Employment Attorney, Allen, Norton & Blue, P.A., Tallahassee, FL
805-519-1428**

Mr. Larkin occasionally did work for Escambia County, which is when he first met Mr. Messer in 1998. They worked together until Mr. Messer left the County in 2001. From 2010 to 2014 Mr. Messer contracted Mr. Larkin on labor and employment issues for the City of Pensacola. Mr. Messer is a bright attorney. He has never been wrong in his advice or recommendations in all the time Mr. Larkin has known him.

Mr. Messer is technologically capable. He uses all forms of technology to communicate with clients, colleagues, staff, etc. He always responds promptly and never leaves issues to fester. He gives legal advice that will help keep his client out of trouble. When he served as City Attorney for Pensacola, it was not uncommon for the elected officials to not listen to his advice. Luckily they did not do anything illegal. He built a solid relationship with the Council and Mayor, so that even if they did not like what he told them, they still respected him.

The biweekly Council meetings were televised. Mr. Messer handled himself professionally during those meetings. He is comfortable speaking with the public in all types of forums. His interactions with his employees are positive as well. He mentors his staff and runs an organized office.

Mr. Larkin works all over the state and Pensacola is the most challenging municipality to work in as an attorney because of the switch to strong mayor form of government. Mr. Messer survived for four years in that environment. He was the first attorney after the change and most people in the organization did not know how the new system worked. He was constantly required to educate and interpret the charter.

One of Mr. Messer's best attributes is his negotiating skills. He negotiated with several collective bargaining units. He is able to see the big picture, so when he compromised with the unions he was able to identify how the changes impacted other negotiations and the general employee population. Due to the poor economic conditions at the time, the Mayor wanted to discontinue pensions, which were a \$116 million unfunded liability for the City. Mr. Messer was insightful and provided potential outcomes for the entire organization.

Mr. Messer has experience with constitutional law, contracts, land use and labor/personnel matters. He may have experience in other areas that Mr. Larkin is not aware of. Mr. Messer did such a great job for both Escambia County and Pensacola that Mr. Larkin referred him to other cities, but at the time Mr. Messer was not willing to leave his position. Any organization he goes

Reference Notes
James M. Messer

to will not have as many problems as Pensacola and he was successful there. He will be a great asset to any organization.

Words or phrases used to describe Jim Messer:

- Smart,
- Speaks well,
- Outgoing,
- Personable,
- Affable, and
- Nice.

Strengths: Negotiations, litigation, ability to see the big picture, and cuts down to the heart of the matter.

Weaknesses: None identified.

Recho Bell - Private Investigator, Milton, FL 850-982-7600

Mr. Bell occasionally assists Mr. Messer on investigating cases. They have worked together since 1993. Mr. Messer is thorough in his research. He makes good recommendations based on his experience and research. He understands the political nature of a municipality and when the elected officials decide to not listen to his advice he is not offended.

Mr. Messer has overseen both large and small cases. He represents his clients as best he can, no matter what the issue may be. He tries to reason with those he represents, but does not force his opinion on them. In most cases he provides more than one option for the client to choose from.

The majority of Mr. Messer's experience has centered on contract law. However, some other areas he has dealt with include utilities, land use regarding landfills and constitutional law.

Mr. Messer has always been responsive and timely. He will make a fantastic City or County Attorney.

Words or phrases used to describe Jim Messer:

- Speaks opinion,
- Intelligent,
- Direct,
- Honest, and
- Prompt.

Reference Notes
James M. Messer

Strengths: Straightforward, articulate, demanding and does not get side tracked.

Weaknesses: None identified.

Rusty Wells - Former City Attorney, Pensacola, FL 850-512-4657

Mr. Wells worked for the City of Pensacola for over thirty years, the last four as the City Attorney. Mr. Messer took over for Mr. Wells in 2010, but Mr. Wells continued to do some contracted law work for the City. They initially met however, when Mr. Messer worked for Escambia County in 1993. Mr. Messer has an extremely good reputation in the state. When he worked for Escambia County he made more money than the County Attorney because the County Attorney felt Mr. Messer's work was worth more than his own.

Mr. Messer has a smooth, cool style. He does not get worked up, no matter how tense or important a case/situation may be. He negotiated high profile contracts without overreacting to the other party's demands. A local restaurant is built on City owned land and the owner leases the property for a fee. When the lease contract was about to expire he advised the City to begin negotiations before it lapsed. Once he began researching the payments and possible conditions of the new lease, he discovered that the business had not been paying their rent for quite some time. He sent a demand for the money owed, which was over one million dollars. The owner refused to pay and the City filed a lawsuit. A loud but small group in the community started a campaign stating that the City was anti-business. Mr. Messer was unflappable however and did not get sidetracked by responding to accusations. He was finally able to get the owner to sit down and negotiate.

The elected officials enjoyed working with Mr. Messer. They listened to his advice because they knew he was not trying to steer them in any one direction. He clearly explained a situation and advised them on how to continue, but often they did not follow his advice. They let political pressures get in the way, but they never did anything illegal. To an outsider, when a council rejects their attorney's advice it looks as though they are rejecting the attorney's wisdom and expertise. However, lawyers in those positions learn to expect it and do not take it personally.

Mr. Messer builds strong relationships with his office staff and colleagues within the organization. He is able to get the most out of people without them even realizing they are working hard. He was able to accomplish all of his duties with a smaller staff than he typically would have had as a City Attorney.

The "occupy" movement hit Pensacola while Mr. Messer was City Attorney. Over 300 homeless, young and well-meaning individuals camped out on the City Hall grass for three months. During times of inclement weather they came into City Hall, cooking and washing their clothes in the bathrooms. Following the direction of the Mayor and the majority of the Council Mr. Messer drafted new codes and zoning ordinances to prevent such long term protests. It

**Reference Notes
James M. Messer**

became a fight over whether their actions were supported by the first amendment or not. Ultimately he won the battle for the City.

The only negative regarding Mr. Messer is that initially he comes off as aloof or over confident. However, within ten minutes it becomes apparent that he is in fact the opposite. He has a self-deprecating humor and the ability to connect with people.

Mr. Wells thinks very highly of Mr. Messer and recommends him for a City or County Attorney position.

Words or phrases used to describe Jim Messer:

- Sarcastic sense of humor,
- Problem solver,
- Charming,
- Respected, and
- Qualified.

Strengths: Smart, analytical skills, widely read and litigation.

Weaknesses: First impression is that he is aloof, but one quickly realizes that is not the case.

John Jerralds - Councilmember, Pensacola, FL 850-433-1749

Mr. Jerralds worked with Mr. Messer from 2011 to 2014. Mr. Messer's knowledge of the law is outstanding. Often times he could quote the law word for word. He does his research before making presentations or recommendations.

Mr. Messer was accessible to the elected officials. He was easy to talk to and provided good information. His recommendations were always based on facts and the law. With any given situation he offered the Council and Mayor multiple options and identified the consequences of each action. In general their decisions followed Mr. Messer's guidance, but occasionally they went a different direction, but never to the detriment of the organization.

With the new format of government, a new city manager, and the confusion that accompanied those changes, Mr. Messer was extremely busy. He was very helpful in making the transition and went through a careful reading of the charter with the Council and Mayor to determine how to proceed. On rare occasions he was unable to answer questions and was given time to research the issue.

Mr. Messer is well spoken and intelligent. When he made presentations he did not stumble over his words or say "um" very often. He was not involved in anything controversial.

**Reference Notes
James M. Messer**

Mr. Messer will serve a municipality well as their Attorney. His skills and background will be an asset.

Words or phrases used to describe Jim Messer:

- Level headed,
- Intelligent,
- Likeable,
- Good reputation,
- Open door, and
- All around good person.

Strengths: Easy to talk to, aware of law, detail oriented and makes references to the law when making recommendations.

Weaknesses: None identified.

Mike Motes - President/Owner, Mike Motes Builders, LLC, Milton, FL 850-626-3471

Mr. Motes has known Mr. Messer since about 1998. Mr. Messer is a phenomenal lawyer. He gives excellent advice and guidance regarding the law.

A little known fact about Mr. Messer is that he is a highly decorated combat Vietnam veteran. He went into the marines as a grunt and retired a Colonel. In fact, he is in several books for his brave service. His experience in the military shaped him and just as he was always there to help his fellow marines, he is always there to help his clients.

Mr. Messer has always been extremely responsive. He does not allow clutter and his office reflects that quality. His employees respect and admire him. He is a well-spoken public speaker and has even argued in front of the US Supreme Court.

The elected officials know that Mr. Messer is a professional. Even when they do not follow his advice, they still recognize his expertise. He understands his role as an advisor, not a policy maker. He also understands who his boss is, and in Pensacola it was the Mayor. During his time with the City the Mayor was threatened with being indicted for what some had perceived as unethical conduct. The Mayor was accused of giving landscaping projects to his friends. Mr. Messer was able to prove that the Mayor was not guilty of any wrong doing. He fearlessly but calmly faced those who made the accusations.

Mr. Messer is a great negotiator. However, he is not willing to compromise right for wrong. He is honest and has the highest integrity. Not long ago he was selected as a county attorney and had even signed a contract. Unfortunately a commissioner thought he could go behind closed

Reference Notes
James M. Messer

doors and try to change the terms of the contract by asking Mr. Messer to take less money that had been agreed upon. He saw this action as a sign of poor judgment and did not want to work for that type of group, so he backed out of the position.

Mr. Motes is a general contractor. At one point he felt that Florida A&M University was being biased about who they hired. He went to Mr. Messer for advice, hoping the advice would be to sue the University. However, Mr. Messer was able to calm Mr. Motes down and convinced Mr. Motes to allow him to write a letter to the college regarding the situation. In the end the school invited Mr. Motes to a sit down meeting and made it clear that he would be given multiple opportunities in the future. Had Mr. Motes sued he would have won, but Mr. Messer chose the higher road and it was a win-win for both parties.

Mr. Messer is a great asset. Any organization would be happy with him as their Attorney.

Words or phrases used to describe Jim Messer:

- Integrity,
- Genuine,
- Professional,
- Disciplined,
- Driven,
- Motivated, and
- Dedicated to family.

Strengths: Follows through, ethical and able to work with people from all walks of life.

Weaknesses: None identified.

Nancy Stuparich - Attorney, Clermont, FL 786-246-0635

In 1995, Ms. Stuparich was the Assistant County Attorney for Escambia County, and Mr. Messer was the Chief Litigation Attorney. They worked together until Mr. Messer left in 2001. Since that time they have remained in contact. Mr. Messer is the person Ms. Stuparich goes to for guidance because he is able to separate which queries are legal questions, fact questions or common sense questions. He is then able to help lead her through the process of determining what action should be taken based on the type of question.

During Mr. Messer's time with Escambia County four of the five Commissioners were removed. They were accused of accepting bribes and violating the sunshine law. Employees throughout the organization were being subpoenaed and were afraid of what to expect. He was a steady and helpful advisor to the entire group. He educated the staff on the process and alleviated some of the fear.

Reference Notes
James M. Messer

Mr. Messer knows his role as City Attorney. He is a counselor and advisor to the elected officials, not a policy maker. Some attorneys cross the line and try to involve themselves in policy making, but he never does. He provides the Council with the information they need to make decisions but allows them to be the voice of the people. If they choose to not follow his advice he makes them aware of what the consequences will be for their decision.

Part of Ms. Stuparich's time at Escambia County she served as the Director of Growth Management. She discovered that the director had approved construction of condominiums that violated specific laws. The County was sued and the case went to litigation. Luckily, the County had Mr. Messer on its side. He headed the litigation and found a resolution that satisfied everyone involved.

Mr. Messer runs a high performance office. He is widely respected by those employees that report to him and those that do not. He took Ms. Stuparich's secretary and paralegal from her. He knows how to get what he wants and goes about doing it without creating bad feelings between colleagues.

People easily open up to Mr. Messer. He has an open door policy, which people took advantage of when they wanted to speak to him. The elected officials appreciated his accessibility and honesty.

Mr. Messer has experience in a wide variety of areas. He dealt with the Occupy Pensacola movement, which became a first amendment issue. He worked with contracts and labor matters as well. He has been involved in eminent domain land use cases and utility franchise litigation. In the private sector he also worked on product liability.

In Pensacola Mr. Messer was faced with major legal issues surrounding the change in the form of government. He was a stable force in the organization and helped the employees and elected officials understand their new roles. If he can survive in that type of situation, he can survive anywhere. He would do well as a City or County Attorney and Ms. Stuparich highly recommends him.

Words or phrases used to describe Jim Messer:

- Accessible,
- Physically active,
- Committed,
- Family oriented,
- Stable force, and
- Good values.

Reference Notes
James M. Messer

Strengths: Provides good advice, listens, dedicated and punctual.

Weaknesses: None identified.

Ron Townsend - Former Councilmember, Pensacola, FL 850-450-3257

Mr. Townsend was on the Council during Mr. Messer's tenure with Pensacola, from 2010 to 2014. Mr. Messer is confident in his knowledge of the law because he has thoroughly researched it and in most cases already dealt with similar situations.

Mr. Messer did a superb job of keeping the elected officials informed. If they had questions for him he made himself available. His recommendations were well founded and accurate. Mr. Townsend was unable to recall whether or not the Council ever went against Mr. Messer's advice.

When Pensacola switched to a strong mayor form of government it created a great deal of confusion. Mr. Messer was stuck in the middle between the Mayor and Council. He knew he had to follow the direction of the Mayor, which left the Council sometimes feeling disgruntled. Despite the many disagreements between the Mayor and Council, Mr. Messer provided the best legal advice he could.

Mr. Townsend is pleased to hear that Mr. Messer is interested in becoming a municipal attorney again because he did such a great job for Pensacola. He will never do anything to create controversy or bring a negative light on any organization he works for. Mr. Townsend would hire Mr. Messer if he were in a position to do so.

Words or phrases used to describe Jim Messer:

- Gets along with everyone,
- Sense of humor,
- Outgoing,
- Honest, and
- Open communicator.

Strengths: Thorough, professional and ethical.

Weaknesses: Gave opinion but could not guide the Council because he worked for the Mayor.

Prepared by: Emilee Anderson
Colin Baenziger & Associates

CB&A Internet Research

Internet Research
MESSER, JAMES "JIM"

Articles are in reverse chronological order

inweekly.net
September 16, 2015

Outtakes- Game of Thrones

Author: Rick Outzen

The Pensacola City Council is once again looking at amending the city charter. Councilwoman Jewel Cannada-Wynn wants the council to schedule a workshop for next February to discuss possible amendments for the 2016 election cycle. At that workshop, she wants an amendment to give the council the power to approve the city administrator. Currently, the mayor has that power, and the council has no say in the administrator's hiring or firing. Councilman Charles Bare wants the council to approve an election for the citizens to vote on an amendment that would give to the city council the power of organizing city government and establishing the departments and their duties. Currently, the mayor has that power, too. The "strong mayor" charter was passed in November 2009 with the understanding that the mayor and the council would have a cooperative nature toward governing the city. Cooperation has been difficult to find in City Hall.

Mayor Ashton Hayward has tinkered with the charter to his advantage. The charter assumed the mayor would appoint department heads on a timely basis. There is no mention of how long the interim status is permitted. The fire department has had an interim chief since 2010. The airport has had an interim director since August 2014. The charter gives the council the power to approve all department head appointments. The mayor labels his department heads "directors" to avoid council review.

The charter makes the city clerk the custodian of city records. At considerable expense, Mayor Hayward moved public records out from under the clerk and created the "Sunshine Center." The public records function now falls under the city attorney. Yes, the state attorney's office found issues with the city's handling of public records back in July 2013. However, the problem was interference from the mayor's office. Prior to 2011, the city clerk had no trouble handling public record requests professionally and on a timely basis.

The city attorney can only be hired or fired with council approval. However, the mayor unilaterally made the decision not to renew the contract of City Attorney **Jim Messer**. His replacement is no longer independent and works under the city administrator. Are amendments the only way to resolve these charter conflicts? No. The council could seek rulings from a judge or seek remedies through stricter ordinances. However, the quickest venue in the past has been the ballot box. The charter amendments that were placed on ballots in 2013 and 2014 passed. So until the mayor's office and council can resolve the disputes over the charter peacefully, we can expect more amendments.

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Articles are in reverse chronological order

inweekly.net
August 6, 2015

A Question of Ethics

When the Pensacola Planning Board considered a request to vacate the right of way along a section of the bygone Bay Boulevard in the East Pensacola Heights neighborhood, questions were raised about the appropriateness of a board member, architect Scott Sallis, participating in the discussion and voting on the issue. Sallis' clients, Paul and Laura Austin, were the ones requesting the vacation. Dean Dalrymple, Sallis' partner at Dalrymple Sallis Architecture, made the presentation on July 14 to the board. Without hesitation, Chairman Paul Ritz replied to a question about Sallis's status on the issue. Ritz said, "Point of order, he is the architect on the board whose position allows him to vote on items that his own office brings. He's the one board member who can, in fact, vote on items that his office has before this board."

Florida law prohibits public officials, including city board members, from participating in discussions and voting on matters that benefit themselves, family members, business associates or clients. In this case, Sallis' clients saw their request rejected on a 3-2 vote by the planning board. Still, his participation in the discussion and vote raised some eyebrows and some questions. "I've asked the city staff to look into that," Ritz said in late July, explaining that he was relying on information from city staff when he cleared Sallis for participation. The chairman also said he could not remember a similar scenario presenting itself: "In my recollection," he said, "I don't believe it's come before the board."

Sallis said he was told by staff in the city planning department that he was allowed to discuss and vote on issues his firm was involved in. And while he said he thinks this month was the first time he actually did so, the opportunity for such isn't rare. "This comes up regularly," Sallis said, adding that he typically chooses to recuse himself "just to keep the drama down and the reporters from asking."

In this vote, the architect said he ultimately decided to weigh in because he felt strongly about the issue—"because of the awkwardness of the public coming into private property just to enjoy the view"—and, without a full board present, felt his voice was valuable. "Because I saw there was really not a good, clean representation on the board there and I wanted the applicant to have a fair vote," Sallis said. Those in opposition to the vacancy request weren't the only ones surprised that Sallis was participating. Beverly Pica, who was joining the Austins in the request to vacate, was also caught off guard. "I was surprised he was allowed to do that," Pica said. "In fact, I mentioned to my husband, 'I'm surprised that he would be allowed to vote, because it'd be an appearance of conflict of interest.'"

Request for interviews with the city attorney and the planning administrator were denied. Hayward's Public Information Officer Vernon Stewart told the Inweekly reporter. "No one will be speaking with you."

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Attorney **Jim Messer**, who served as city attorney from 2011 until March 2015, said he was unfamiliar with any exemption from Florida ethics laws for the planning board. The attorney noted that ethics issues were usually fairly easy. "Ethics is your gut reaction," **Messer** said. "We really shouldn't have to struggle with these issues."

While the State of Florida Commission on Ethics cannot offer an official opinion, it's communications office did point to a 2004 opinion the commission issued. The opinion pertained to Pensacola specifically, and essentially said the city's Architectural Review Board could have designated architects on it whose firms or clients brought matters before the board without violating the conflicting employment portion of the Code of Ethics. "That's the upshot of the opinion," said Kerrie Stillman, the commission's spokesperson.

The opinion pertained specifically to the Architectural Review Board, not the planning board. However, Stillman also pointed out that the opinion only pertained to the conflicting employment portion of the code and did not cover that the voting conflict portion. She said, "The voting conflict statute is always in play with officials who have issues that come before the board."

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inweekly.net
April 1, 2015

Coffee with the City Attorney
A Candid Interview with Jim Messer
Author: Rick Outzen

Jim Messer strolled into Seville Quarter. After an exchange of text messages, the former city attorney had agreed to talk about his four years in the Hayward administration. I didn't expect any bombshells, but I knew he would be candid and open. Openness has been sorely lacking in Pensacola City Hall over the past few years. A Marine Corps officer who earned a Purple Heart, Silver Star and Bronze Star while serving in the Vietnam War, **Messer** has always had a "don't give a damn" attitude when it comes to criticism. He is a damn good attorney and that is what he wants you to know.

His tenure as Mayor Ashton Hayward's first appointed city attorney began with controversy. Council President Maren Deweese and blogger Derek Cosson worked hard to derail the appointment, waging a four-week campaign trying to convince the Pensacola City Council to vote against the mayor's recommendation to hire **Messer**. In her memorandum to the council, Deweese criticized the proposed contract because it was with **Messer's** law firm and not an individual. She believed the city should have advertised for law firms that offered a "broader range of talents." Deweese also questioned whether the **Messer** law firm had adequate malpractice insurance to cover the city.

Despite her protests, the council approved an interim agreement with the **Messer** law firm. Later in the year, they voted for a three-year contract for **Messer**, which expired in December 2014. "I didn't seek out the job," **Messer** told me as the waitress brought us coffee. **Messer** drank his black, of course. It was the mayor's chief of staff, John Asmar, who had first broached the idea. **Messer** and his family lived in Birmingham, Alabama at the time. "I told John, 'I'll come down one time. I'll send you my resume. If it works, it works, but I'm not interested.'" Laughing, he said, "I had to come down three times, as you know, and all of sudden Cosson is publishing all these wild-ass conspiracy theories on his blog, trying to make me look like some criminal."

Later in the summer of 2011, Mayor Hayward hired Cosson as his public information officer. In 2013 when the PIO got in trouble for lying to the media and criticizing council members and promoting the mayor's agenda using fake names on area websites, Cosson was made the mayor's press secretary. That appointment was short-lived when Cosson was charged two months later with a non-criminal violation of the state's public records law. He was reassigned to the IT department. He would get in trouble yet again when he launched in 2014 an anonymous blog that accused reporters and others of being homosexuals and attacked council members and the mayor's political opponents. Despite reports to the contrary, the city still has him drafting press releases for the mayor and the Pensacola International Airport.

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In his first two years as city attorney, **Messer** defended the mayor in two lawsuits brought forth by council members. Councilwoman Sherri Myers filed suit following Hayward’s May 2012 memorandum, which directed council members to channel their communications with city staff through the mayor’s office. Judge J. Scott Duncan issued a ruling that had both sides declaring victory—essentially ruling that the mayor could institute such a policy, except in the case of “inquiries.”

In December 2012, DeWeese filed a lawsuit alleging, among other things, that the mayor’s line item veto of the council’s changes to the Fiscal Year 2013 Budget was illegal and a violation of the separation of powers and the charter. Circuit Judge Terry Terrell eventually dismissed the case. After those suits, **Messer** faded into the background, other than attending council meetings. Mayor Hayward became more dependent on outside legal advice, spending more than \$1 million annually for legal help.

In December 2014, Hayward’s chief of operations, Tamara Fountain, announced **Messer’s** days working for the city were done. In an email, Fountain told the city council that his contract would not be renewed. The mayor would not be hiring another law firm to serve as city attorney, but he intended to “bring the position in-house and will conduct a statewide search for a city attorney with a strong background in Florida law and municipal experience.” **Messer** served as city attorney on a month-to-month basis until his replacement was hired. When asked why his contract wasn’t renewed, **Messer** said, “Who knows why I’m not the city attorney anymore? I understand, I didn’t always tell the mayor what he wanted to hear, and that became a closer question toward the end of my tenure. I couldn’t tell the mayor, just like I couldn’t tell the city council that they were right or wrong when they weren’t.” His replacement, Lysia Bowling, was approved in March by the council.

Three Powers

After the council vote for Bowling, **Messer** agreed to have breakfast. He wanted to make it clear that he had no “sour grapes” about his contract not being renewed. He considered Hayward a friend and enjoyed working with him. We did talk about the city charter and how he saw his role as city attorney. According to **Messer**, the city charter gives the city council only three powers: to appropriate, to legislate, and to investigate. He argued that the city council is primarily ceremonial in many ways but still sees itself with the same powers, duties and responsibilities it had under the city-manager form of government under the old charter. “Let me ask you this question,” he said, “can they never not approve the budget?” No. They have to approve the budget. “In a realistic sense, their approval of the budget is largely ceremonial,” said **Messer**. “Here’s why. Everyone talks about five votes. Mayor doesn’t need five votes. The mayor needs three votes.”

Yes, it takes five council votes to approve the budget, but the mayor can veto any changes made to his budget. To prevent the council from overriding his veto, he only needs three votes to stop it because the charter states that such a vote requires a super-majority, six votes. “We had this lawsuit (filed by former Councilwoman Maren Deweese) that, in my opinion, established exactly

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how the budgetary process works," he said. The judge ruled in favor of the city. The waitress brought us more coffee and a platter of beignets.

Messer said, "There's a two- or three-page memo that I wrote that's the basis of our case. It's the law of the case now. Forever and a day, that cannot change." "The case clearly establishes that funds do not move back and forth like people doing the salsa on 'Dancing with the Stars,' just because the city council makes a motion. It established the mayor's line item veto." In essence, the mayor really controls the budget as long as he has three votes. "The old days are over," said **Messer**, "The old days were really over the minute that they passed the new charter establishing the strong mayor." He said, "You don't have to contort the charter. It says the mayor can veto, you don't have to go any further."

He sipped his coffee and took a bite of a beignet. "I think that goes back to a fundamental misunderstanding of the people who either voted for the charter, or the cleverness of the people that drafted it," said **Messer**. "The reality is, we can sit and have beignets or we can write blogs and bitch about it, but think about this," he said. "Every time that charter has been subjected to an objective analysis by a legally trained mind, and I'm talking about two circuit court judges, the first circuit court of appeals, and the 11th circuit, they have always upheld the city attorney's interpretation of the charter and always upheld the mayor's executive privilege vis-a-vis council." "We decided to ask for summary judgment on the cases," said **Messer**. "I hate it when I read this crap about the motion, there was no motion to dismiss. Each judge looked at the facts in the law and said this isn't going any further. These challenges are so absurd, the city's position is so strong, it's a waste of my energy to talk about. They gave us a judgment."

He said there is no conspiracy to subvert the new charter. The charter set this up and all the complaining in the world won't change it, "as long as the mayor is savvy enough to have three votes," according to **Messer**. "This charter legally changed how the executive and the legislative branches operate," he said, "It, in essence, changed the entire past structure of this city. It's something some council members have failed recognize." He said the charter language is clear and unambiguous. "One of the best covers of your paper, cause I love your covers, was 'Dysfunction Junction,'" **Messer** said, sipping his coffee. "I went, 'This guy gets it.'"

He got frustrated sitting in council meetings and hearing council members say: "We don't support the charter, we were lied to." "It's not the intent of the charter." "I can't believe this is true." "I was betrayed." He said. "The point that they failed to grasp is no one cares about the intent of the charter. Because when you look at the charter as a law, under the light of the law, intent doesn't matter."

On the council's power to legislate, the attorney said the body has yet to grasp fully its role in governance, but he added it might not matter because the mayor can veto any law they pass. "Name three significant pieces of legislation that passed," said **Messer**. "Listen to me carefully, I don't give a damn what their legislative powers are because they can't stop the mayor in any significant activity that he wants to undertake." He said, "Why? Cause the only thing important

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is downtown beautification and jobs. Anybody who votes against that's going to be run out of office."

Messer paused to eat another beignet. "My point being not to make fun of them, but to say they have no choice. They can fiddle around, are chickens going to be allowed to lay eggs in East Hill? The significant decisions in the cities, where the grant money goes, how you get the grant money, what do you do with development, do you bring in new business? That's all executive stuff." He added, "When I say they have no choice, literally they can vote against it. Can you imagine a city councilman voting against getting 300 jobs or 100, even 25 jobs—I don't want 25 jobs in the city, not going to vote for it.' They may be pissed off, they may be resentful, they may go bully the staff, but they're going to vote for it."

The one power the council has that mayor can't compromise is its power to investigate, according to **Messer**. The charter states the council has the power to "inquire into the conduct of any municipal office, department, agency or officer and to investigate municipal affairs, and for that purpose, may subpoena witnesses, administer oaths and compel the production of books, papers, or other evidence." **Messer** said the council came close several times to invoking this power, particularly in the case of former City Administrator Bill Reynolds leaking a confidential employee complaint. "They have never been able to mount the political will to vote for an investigation," **Messer** said.

The attorney said that while the charter lists duties and powers of the mayor, it has few penalties. The mayor went six months before naming a replacement for City Administrator Colleen Castille. To side-step council approval of his new department heads, the mayor has renamed the positions as directors or officers. The city has a code of ethics that hasn't been enforced by the mayor or council. **Jim Messer**, "I'm saying, don't blame the city attorney for that."

The Role of City Attorney

Did **Messer** believe he worked for the mayor? Or did he work for the council? Or did he work for the city? "Let's talk about that, because that was always frustrating," said **Messer**. "I worked for the city of Pensacola. City of Pensacola's a municipal corporation. I used to ask people all the time and then I got worn out and said screw it. You've probably figured out the advice I've given the mayor, which had been validated by the judiciary." He said, "What if I'd given the opposite opinion? I'd be incompetent."

Leaning forward, **Messer** said, "My point being, like the mayor, don't like the mayor, the fact of the matter is, the city of Pensacola is now represented in most, if not close to all things, by the mayor." He said, "When you ask who did I represent? I represented the city of Pensacola, and you have to figure out who is that. You can't represent a piece of paper. In the issues that came before the judiciary and the state attorney, the mayor's position has to be correct. You flip it and say how could I possibly represented the city council because they were legally incorrect. " The charter states that the city attorney will represent the City in legal proceedings. Why was he not

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supervising all the city's litigation? He smirked, "Cause I'm an incompetent, board certified civil trial attorney with two law degrees, with an unparalleled record of success."

I hit a sore spot. "Employment law, civil litigation, bankruptcy, code enforcement, some environmental, labor, all that stuff, in my opinion, should be handled by the city attorney's office," said **Messer**. His fee structure was based on his office handling all that work with two assistant attorneys. Instead the mayor's office made the decision to take most litigation outside of the city hall. He said the city is paying over \$1 million in legal fees annually.

What would have been the value of keeping the legal services in house? "First of all, that gives you control of the litigation," said **Messer**. "It gives you accountability for the litigation. It gives you a reasonable rate of return. It's not about ripping anybody; it's about responsibly analyzing how much does it cost to handle the legal affairs of this city, on a yearly basis and how do you want to do it? He reminded me that the city attorney's office at one time had four or five attorneys. He said his contract made sense if the mayor had brought all the litigation in-house. He would have had one assistant attorney to do the municipal law and handle the council and city boards and another to help him with the litigation.

"It would have been a fabulous office, run very efficiently and economically, when you look at what's it become now," said **Messer**, shrugging his shoulders. "That again ... I never complained about that." Overall, he is proud of his work for the city and in establishing the case law for the new charter. He said, "I took the charter, gave it what I thought was a clear, plain meaning, and subjected it to judicial scrutiny."

He admitted that he has been stunned at how some keep beating up the charter, even after the court rulings. "Why do we keep gnawing on this same bone?" he said. "That goes back to my original theory that there are a group of people that either thought the charter was sold to them as a bill of goods, and they take it personally and simply aren't going to live with it. Or you have a group of people who are simply ignorant, and you have to respect that. Because people who devote their life to being ignorant, I think they have the same respect as people who devote their life to being smart." Setting down his coffee and getting up to leave, **Messer** said, "I think that is the almost singular explanation for the dysfunction that we have."

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Studer Community Institute
January 8, 2015

**Senior living center project will go on without tax break
\$16 million project will go on despite Property Appraiser Chris Jones' rejection of request
for a 10-year property tax exemption**

Author: Carlton Proctor

Construction of a \$16 million senior living facility in Pensacola will continue despite Property Appraiser Chris Jones' rejection of the developers' request for a 10-year property tax exemption. Ground for the 89-unit facility was broken last month at the site of the former Pensacola Racquet Club. Once completed, the facility is expected to add 60 new jobs to the workforce. Jones said earlier Thursday that he and acting City Attorney **Jim Messer** met this week to discuss the legality of the application. After a review of state statutes setting criteria for Economic Development Ad Valorem Tax Exemptions, Jones and **Messer** agreed the request from Hardcourt Development LLC did not qualify as a "targeted industry."

Despite the setback project spokesman John Myslak said the loss of a \$46,000 a year tax exemption would not halt or delay construction. Myslak said he had heard the application had been rejected and sent back to the city, but as of late Thursday he had not been officially notified of the decision. "I know meeting with (Chris) Jones and city staff a couple of weeks ago there was confusion over the city's application form for EDATES," Myslak said. "If you look at the city's application and the evaluation form, it clearly includes assisted living facilities."

However, Jones said the state statute clearly identifies three categories of commercial projects that meet EDATE standards: 1) Manufacturing; 2) professional offices; and 3) businesses that produce products. "The city attorney agreed with us that Hardcourt Development was not a targeted industry and at that point the city asked us to send the application back," Jones said.

The Hardcourt saga began late last year when developers, which include City Councilmen Larry B. Johnson and Brian Spencer, applied for an EDATE with City Hall. City staff provided Hardcourt with the application and evaluation form, and, subsequently, sent it to city council with a recommendation for approval. Jones said he first learned about Hardcourt's EDATE application directly from Pensacola City Councilwoman Sherri Myers, and at that point intervened, notifying all parties that his office approval was necessary prior to the EDATE being green-lighted by City Council. Myslak said the application for a tax break would not be resubmitted. Both Spencer and Johnson did not participate in the council vote on the tax break.

Pensacola Mayor Ashton Hayward, who had supported the Hardcourt application, said in December he would withdraw that support if Jones determined the project did not meet state guidelines. As a result, Hayward has ordered city staff to accept no additional EDATE applications until they are pre-approved by Jones' office.

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Pensacola News Journal
December 18, 2014

Next Pensacola city attorney will be city employee

Author: Rob Johnson

In the wake of recent criticism about hiring outside attorneys and running up legal bills, the city of Pensacola has decided that its next lead lawyer will be on salary as an employee. The three-year contract of **James Messer**, a private attorney who has represented the city since 2011 and been paid in the range of \$120,000 to \$130,000 a year, with additional fees for litigation, expired last Sunday. **Messer**, 67, who couldn't be reached for comment on Thursday, had an occasionally uneasy relationship with the Pensacola City Council, some of whom expressed dissatisfaction with his answers to legal questions posed at their meetings. His main experience is in business law, which is important at City Hall. "I think Jim did a good job. But I also think the next city attorney should have a background in municipal law," Council Member P.C. Wu said.

Tamara Fountain, chief operations officer for Mayor Ashton Hayward, wrote a memo to the council members earlier this month in which she said her boss "will bring the position in-house and will conduct a statewide search for a city attorney with a strong background in Florida law and municipal experience." To council members, **Messer's** pay and his perceived loyalty to Hayward underscored their unhappiness with the city's hiring of dozens of outside attorneys and fees that totaled hundreds of thousands of dollars in recent years. "I like **Jim Messer**. But he always sided with the mayor on legal issues," Council Member Sherri Myers said.

Some on the council have complained that city funds haven't been budgeted to hire an attorney who works directly for them to represent their positions on various city issues, including the awarding of city contracts to vendors. Putting the city attorney on salary, as opposed to paying hourly fees, could save money, said Council Member Brian Spencer: "I believe it will result in a significant cost savings to the citizens of Pensacola" on contract negotiations and legal analysis, among other matters. Fountain said **Messer's** law firm will remain on a month-to-month contract until a new city attorney is hired, which she expects will happen within 90 days.

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Pensacola Daily News
June 24, 2014

Pensacola City Council to consider no confidence vote

Author: T.S. Strickland

Mayor Ashton Hayward's decision to fire Lila Cox — the Pensacola City Council executive — has not been well received by the city's legislative branch. Council President Jewel Cannada-Wynn has called a special meeting for Tuesday morning to discuss the decision. Also Thursday, the council will consider taking a vote of no confidence in City Attorney **James Messer** and asking voters to consider amending the city charter to allow for mayoral recall.

Cox, who served as the council's only dedicated staff member, was fired suddenly and without explanation Thursday afternoon and replaced by former city attorney William "Rusty" Wells. The city charter gives the mayor the unilateral authority to fire the council executive. However, the decision was not without repercussions. City of Pensacola fires Cox, rehires Wells Councilwoman Sherri Myers called it the "last straw" on the back of Hayward's strained relationship with the council.

In an internal memo announcing the decision Thursday, Hayward cited the desire among many council members for more staff support, especially with legal matters, as one reason for Cox's termination. In recent years, council members have repeatedly expressed their desire for independent legal counsel. Council members have accused City Attorney **James Messer**, who serves at the will of the mayor, of failing to adequately represent their interests. In particular, some have criticized **Messer's** interpretation of the city's fledgling charter and the respective powers and duties of the city's executive and legislative branches.

The council has cited these concerns as justification for hiring their own legal staff. However, up until now, **Messer** has advised the council that doing so would not be permitted by current city law. In the memo sent Thursday, Hayward said he hoped Wells' appointment would help address the council's need for more legal expertise. However, Cannada-Wynn noted that the council executive position was supposed to be distinct from that of a council attorney. Councilwoman Sherri Myers has said she can have no confidence in Wells' independence, so long as he serves at the will of the mayor.

The council could take steps to address these issues Thursday. Cannada-Wynn has asked her fellow council members to consider taking a vote of no confidence in Messer and to ask that voters consider amending the city charter to allow the council to hire their own attorney and additional staff. The council will also consider rehiring Cox and asking voters to amend the charter to allow for mayoral recall. Under current city law, council members can be recalled by voters, but the mayor cannot. The council will meet at 10 a.m. Tuesday in Council Chambers at Pensacola City Hall, located at 222 W. Main Street.

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inweekly.net
March 27, 2014

Winners and Losers

Author: Administrator

Winners

North Hill Preservation Association

When the residents in one of Pensacola’s oldest neighborhoods learned the state was relocating its Parole and Probation office to the old Coca-Cola bottling plant on North Palafox Street, they organized and made appeals to Mayor Ashton Hayward, Pensacola City Council and Governor Rick Scott. When the governor was in town, they picketed the event. The next day the Department of Corrections announced it was not moving to North Palafox—another grassroots victory for another city neighborhood.

IMPACT 100 Pensacola Bay Area

The local women’s philanthropy group announced that its 2014 Membership Drive successfully concluded with 1,025 members. The organization will give back to the community by awarding 10 grants of \$102,500 each to non-profit agencies in Escambia and Santa Rosa Counties in October. Since its inception in 2004, IMPACT 100 Pensacola Bay Area has awarded 47 grants to 39 different non-profit agencies for a total of \$5.151 million.

The Arc Gateway

The organization is celebrating 60 years of serving children and adults with intellectual and developmental disabilities in the greater Pensacola area. With the support of its members and volunteers, The Arc Gateway has provided a variety of programs—from pediatric therapy and recreation to residential support and vocational training—to help the people they serve realize their dreams.

Losers

City Consultant Addiction

One of the biggest criticisms that the Independent News had of the city manager form of government was its love for hiring consultants, completing studies and then ignoring the recommendations. The “addiction” has not gone away. The city paid Robert Marbut, the expert on the homeless, \$3,000 plus travel expenses not to exceed \$1,413 for two days of basic research and to conduct its community forum on the issue. It also picked up the tab for Carol Johnson, another consultant, to speak at the joint workshop of the Pensacola City Council and Escambia County Board of County Commissioners.

Jim Messer

The attorney for the city of Pensacola has opined all city leases must go before the Pensacola City Council for approval. That is until Mayor Ashton Hayward lost the vote to give the airport food concessions contract to OHM Group. We’re not sure the city charter envisioned the city attorney being only the mayor’s attorney.

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Pensacola Daily News
March 18, 2014

Hayward vetoes Pensacola council action on airport contract

Author: T.S. Strickland

Pensacola Mayor Ashton Hayward on Tuesday vetoed the Pensacola City Council's decision to extend the current concessions agreement at Pensacola International Airport with Robert de Varona. The council had authorized the extension Thursday after the mayor pulled a recommendation that the council award a 10-year, multimillion-dollar contract for airport concessions to Missouri-based OHM Foods when de Varona's contract expires March 31. The council initially rejected Hayward's recommendation of OHM in January.

City Attorney **James Messer** had advised council members before the vote that he did not believe they had the authority to extend the contract unilaterally. A separate, third-party opinion by Tallahassee-based law firm Allen, Norton and Blue — secured by the mayor earlier this year — came to the same conclusion. In a statement issued Tuesday afternoon, Hayward said he did not make the decision to use his veto power lightly. "While I believe council took an improper action, I have exercised my executive veto power out of an abundance of caution," the mayor said. "My city administration went above and beyond to conduct an extremely fair competitive bidding process that remains uncontested by any of the (request for proposal) participants. I am disheartened that some City Council members continue to try to undermine and circumvent the fair process, and continue to act in a way that subjects the city to legal liability."

Last year, OHM was ranked the highest among four companies that bid for the contract by a five-member selection committee. The second-highest ranked bidder was Creative Food Group of New York, which partnered with de Varona and several other local restaurateurs to offer Pensacola brands at the airport. Since then, representatives of Creative Food Group and several council members have expressed concerns with what they said were flaws in the selection process and called for a new request for proposals to be issued. Hayward, however, has stood by the committee's recommendation and accused de Varona and his associates of trying to subvert the selection process.

Last week, Airport Director Greg Donovan told the council that two temporary vendors were prepared to begin operating at the airport once de Varona left — leaving open the possibility that Hayward might issue a new request for proposals. There was no mention of those temporary vendors in Tuesday's statement. In fact, Hayward said he planned to award the concessions contract to OHM, without the consent of the council. **Messer** had told council members last week that he felt the mayor had the authority to do so, though several council members objected to his interpretation of the City Charter.

According to the charter, "a veto may be overridden only by an affirmative vote of a majority plus one," or six council members. Five of the eight council members present at Thursday's meeting voted to extend the contract. Only council members Andy Terhaar, Larry Johnson and

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Jewel Cannada-Wynn opposed the extension. Councilman P.C. Wu, who did not attend the meeting, has supported de Varona during previous votes. It is not clear whether the council would have the authority to overturn the veto. **Messer** has told council members he believes the mayor has sole power to award the contract — a legal interpretation that was not mentioned when the mayor first asked the council to approve the contract in January.

On Tuesday, Hayward said he felt the decision was in the best interest of taxpayers and travelers. "OHM Group's minimum annual guarantee translates into an additional \$1,038,720 over and above the current vendor during the 10-year contract," Hayward said. "OHM brings over 100 jobs to the local economy. OHM ensures 60 percent of goods and services purchased will be made with local vendors. ... This is clearly the best business decision for the airport and the traveling public. "There will be no interruption in service, and no further action by council is necessary to ensure continued service." The City Council will consider the mayor's veto at its agenda conference Monday.

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Pensacola News Journal
January 28, 2014

No consensus on airport concessions

Author: T.S. Strickland

Five days after the Pensacola City Council rejected Mayor Ashton Hayward's recommendation to award a 10-year, multimillion-dollar contract to Missouri-based OHM Foods, there appears to be no consensus on a path forward. The council was split 4-4 on the decision, with Councilman Brian Spencer abstaining because of a conflict of interest. In a statement issued through his press office Monday, Hayward was highly critical of the council's decision. "Our City Council is charged with wearing several different hats," he wrote. "One of those hats is board of directors of city enterprises. With that role comes a fiduciary responsibility to the bottom line of the enterprise and an obligation to get the best deal for the taxpayers. The council members who voted against awarding OHM the concessions lease at the airport failed to meet this obligation as well as the requirements of our competitive bidding process."

The current airport concessions agreement — held by local restaurateur Robert de Varona — expires March 31, and the future of the airport's concession services after that date is uncertain. De Varona, along with fellow local restaurateurs Collier Merrill and Rob Mackey, joined forces last year with Creative Food Group of New York to offer well-known Pensacola brands, including The Fish House, as dining options at the airport. Their proposal was ranked second by a five-member selection committee last year —narrowly outscored by OHM.

In his statement, Hayward said the city was considering issuing a new request for proposals in coming months. Councilman Charles Bare has estimated that process would take six months to a year. Bare has said the contract with De Varona includes a "holding over provision" that would allow the mayor to extend the contract on a month-by-month basis during the request process. The mayor, however, has expressed no appetite for the idea. On Monday, Hayward said the city was considering finding "temporary concessions vendors" to operate at the airport in the interim. On Tuesday, Tamara Fountain, communications administrator for the city, said De Varona was not among the vendors being considered.

At least one council member was puzzled by the statement. "To me it seems like going to a temporary vendor over going with someone who has been there ... seems almost vengeful," Councilman P.C. Wu said Tuesday. "I don't understand the logic." The idea also has stoked simmering tensions between Hayward's office and the council over the division of powers under the city charter. Bare said Tuesday that he did not believe the mayor would have the authority to contract with a temporary vendor without the council's approval. However, Fountain said that temporary service contracts — such as would be executed at the airport — were solely within the mayor's purview and would not have to go before the council.

"The city attorney (**Jim Messer**) has opined that this would be in the mayor's jurisdiction," Fountain said Tuesday. **Messer** could not be reached by deadline to confirm the statement. The

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city charter also was invoked, with differing interpretations, during last week's council discussion. After council members rejected the OHM proposal, Bare brought forward a proposal to extend for 12 months the contract with De Varona. That proposal was defeated 6-3, with only Bare, Wu and Sherri Myers in support. Bare has said he was not in favor of awarding the contract to Creative Food Group, preferring, rather, to see an entirely new RFP. However, he also said it was unfair to De Varona to extend the contract on a month-by-month basis –without some guarantee that his business would not be shut down on 30 days' notice. Wu said he thought extending the contract was "the logical thing to do." However, the mayor said he did not believe the council had the authority to extend the contract.

When the question was referred to **Messer**, he called it "an interesting issue of executive versus legislative power that I'm not prepared to opine on." Though, he later added, "I think the stronger argument is that it is an executive power (i.e. within the mayor's purview)." On Tuesday, Fountain said **Messer** had requested a third-party opinion on the matter to avoid the appearance of a conflict of interest. That opinion was not available. Speaking Tuesday, Wu said he was "shocked" that no clear plan had been articulated by the mayor's office, though he expected that the administration would present a plan to the council at next month's meeting. "I was surprised that there wasn't a backup plan in place," Wu said. "It doesn't seem like there was even any thought given to it."

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Inweekly.net
May 8, 2013

Council's CMPA Divide
Author: Jeremy Morrison

Pensacola City Attorney **Jim Messer** seemed unclear on exactly what City Councilman Brian Spencer was wanting of him during last night's Committee of the Whole meeting. "They're are certain grounds to remove trustees," **Messer** told the councilman. "In order to establish a process or deviate from'em, the Community Maritime Park Associates is going to have to amend their bylaws." Spencer had requested that the attorney provide a legal memorandum outlining a process by which council could remove the sitting CMPA board, and replace trustees with either themselves or their appointees. It was a continuation of an ongoing discussion concerning the composition of the CMPA board, which oversees the Community Maritime Park. "I guess my question is, what's the reason behind this?" asked Councilman Gerald Wingate. "We're not getting the answers we want from the CMPA is the reason we want to replace them? We're not satisfied with what they're doing? What's the reason?"

Spencer noted recent issues concerning the CMPA— "certainly, it's no secret that Mr. Gunther has been the headliner, stealing a lot of ink lately"—and said that council members had needed to engage in "spirited, lengthy discussions, as though we were sitting as the CMPA." Over the last few months, questions have arisen as interested parties—first the YMCA, then Beck Property Company—have sought parcels at the Community Maritime Park. Both Spencer and Councilman Larry B. Johnson have pushed for reassessing the CMPA's composition.

While several members seemed up for engaging **Messer** in an academic legal exercise, they also voiced concern about the impacts of the direction Spencer was laying out. Members raised concerns about cutting loose trustees who have put in countless volunteer hours and about how much control council actually held over the CMPA due to the involved New Market Tax Credits. Council President P.C. Wu warned members to "be careful what you wish for," noting how many hours of service were required of CMPA trustees.

Ultimately, council was split 4-4 on requesting a memorandum from **Messer**. Councilpersons Sherri Myers, Andy Terhaar, Wu and Spencer were in favor, while Charles Bare, Megan Pratt, Vice President Jewell Cannada-Wynn and Wingate were opposed. Councilman Johnson was absent for the vote.

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inweekly.net
April 10, 2013

A Day at the Park with Jim Reeves

Author: Jeremy Morrison

In the wake of the YMCA’s walkaway amidst a procedural nosedive, city of Pensacola Attorney **Jim Messer** has issued a memorandum outlining the legal relationship between the city and the Community Maritime Park Associates. The attorney describes the CMPA as an “alter ego” of the city, and indicates that the entity “has no right to deviate from whatever basic concepts are transmitted to it for negotiation.” With the intention of building a new YMCA on parcel 8 at the Community Maritime Park, Y representatives approached Mayor Ashton Hayward late last year. When he brought the organization before the Pensacola City Council for consideration—with a lease hammered out with **Messer** in hand—questions arose about process. Council members wondered why the Y had not come through the CMPA board.

After approving the Y lease—in “concept”—the city council left it to the CMPA board to work out the lease. The park board then decided to direct the YMCA away from the waterfront parcel, which resulted in the organization leaving the negotiating table. As a result, the city council requested that **Messer** provide an opinion on how the city and CMPA were to function when dealing with the park. He informed them they could remove all of the CMPA trustees and replace them with members of council or their designees. In addition, the city recently commissioned an assessment of park finances and operations from former Escambia County Administrator Randy Oliver. The city has also brought aboard a firm to market the park, a job that has been left to the Parks and Recreation Department.

CMPA Treasurer Jim Reeves took a few moments recently to enjoy some sun at the park’s Hunter Amphitheater and talk about the recent issues surrounding the Community Maritime Park.

IN: Let’s dive into the middle of it. What’s your opinion on **Messer’s** most recent opinion?

REEVES: Well, **Messer’s** most recent opinion is absolutely wrong.

IN: Why?

REEVES: Because there’s four documents that control the Community Maritime Park Board’s involvement in this particular park and, and he really asked, in my opinion, the wrong kind of questions to the New York firm, but when you’re a lawyer and you want a specific answer, and you’re paying for it, you usually can get whatever answer you want.

IN: What do you think we will have learned on the other side of the YMCA issue?

REEVES: What I think we have to work together in the spirit of unity, harmony and cooperation. And the problem is, you have the executive branch, you have the legislative branch, and then you have this group that was set up primarily in order to get the New Market Tax Credits, and so we just all have to work together. I mean, nobody can dominate necessarily.

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IN: What are your thoughts on the paths **Messer** laid out going forward?

REEVES: First of all, I've asked for public records, I've made a public records request concerning the writing of the opinion from the exterior lawyers. Those lawyers do not represent the Community Maritime Park Board. Those lawyers represent either the mayor or the city. And so I kind of want to see the background of how that got generated and what the instructions were prior to that opinion being written. Haven't gotten that request other than an acknowledgement that I asked for it.

IN: In your view, how does it work?

REEVES: Well, how it works, is simply we're the landlord of the park, meaning the Community Maritime Park board is the landlord. Nobody, no lawyer—I'm a real estate lawyer—no lawyer would be happy without having a joinder of the landlord. And we are the landlord, it's just that simple. All you have to do is look at the title evidence for the Studer piece and you will see that it requires a joinder of the Community Maritime Park Board. So, he's just wrong.

IN: In this Y deal, where in the process do you think it went wrong?

REEVES: In the process. And that's not to be a smart answer. It would have been so much easier if we had all worked together and kind of not have excluded anybody. Don't exclude council, don't exclude the mayor and don't exclude the Community Maritime Park board.

IN: What do you think of Randy Oliver's report?

REEVES: [Laughter] He works for the city. He was instructed by the chief of staff that he was not to make negotiate any deals or what-have-you. That report was to go through the mayor. Period.

IN: Do you like any of his recommendations?

REEVES: Oh sure I do, sure I do, but we're all in this together and, look, if the Community Maritime Park board was broke, who do you think is gonna pick up the tab? The city. So, we just gotta work together and work this situation out, both for the city's sake and for the park's sake. And it can be done.

IN: Isn't the Community Maritime Park broke?

REEVES: Sure, yeah sure. But, understand, our biggest bill comes from the city of Pensacola. For police, for Parks and Recreation, cutting the grass, it all comes from the city of Pensacola. So, it's one of those things, they can't collect the rent from everything that goes down here, and we have all the expenses. It's that simple.

IN: Do you see any of these issues being resolved anytime soon?

REEVES: I hope so.

IN: How do you think this park should be marketed?

REEVES: I'm going to keep from being presumptive. You know, the mayor's hired a marketing firm, and so I'm gonna kind of wait and see what they say. I wouldn't be surprised if there were

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other people looking to locate here, but they know a better way to do it than the last try with the Y. That's a rhyme.

IN: What do think of the Park and Rec's job so far?

REEVES: Well, let me put it this way. It's hard for, in my opinion, government to do what the private sector could probably do better. I don't want to be critical. I think they've done the best they can with what they've had to do with. Is that tender enough?

IN: That is tender enough.

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Studer Community Institute
September 27, 2012

Whose line-item: defining the mayor's veto and purchasing powers

Author: Joe Vinson

The Pensacola City Council will determine at Thursday's meeting how to respond to Mayor Hayward's line-item veto of their budget amendment, which removed \$220,000 appropriated for the city's marketing campaign and applied it to the council's own budget. If the council can't garner the six votes needed to override the mayor's veto (or even if they can), they are expected to challenge the mayor's asserted authority to veto an amendment rather than an actual budget line-item. But will it even matter?

In exercising his line-item veto power, Mayor Hayward declared that he was not only removing the extra funds that council appropriated for itself, but also restoring those funds to their originally allocated purpose. In other words, rather than striking a line-item from the amended budget adopted by council, he was treating the council's amendment itself as a line-item. On her blog, Councilwoman Maren DeWeese questioned this ability. "Someone needs to explain to the mayor that he does not have the power in the use of a line-item veto to reallocate the funds back to the previous location in the budget," she wrote. "It's not called a line-item reallocation. Does the mayor now have more power than any governor in America?"

City Attorney **Jim Messer** later issued an opinion explaining why he believes the mayor's action was consistent with the city charter. "The adoption of the City budget is a continual process that begins and ends with a balanced budget," he wrote, saying that the budget must remain balanced throughout the process. He added that the council may "propose changes" as "an expression of their intent that the Mayor alter his budget," but that ultimately, the council's actions "cannot effectuate the movement of appropriations." So, if the mayor's veto power only removes appropriations without reallocating them, the budget would be unbalanced, because there would be more revenue than expenditures. **Messer** says that can't happen.

But wait a minute: isn't that exactly what happens in the state's budgeting process? Florida has a balanced budget obligation at both the statutory and constitutional levels, but the purpose is clearly to avoid a deficit. According to Florida Statute 216.221, the governor must "ensure that revenues collected will be sufficient to meet the appropriations and that no deficit occurs in any state fund." According to Article 7 of the Florida Constitution, "Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period."

If the legislature passes a balanced budget and the governor vetoes certain line-items, that money simply isn't spent. The unappropriated surplus — \$142.7 million vetoed by Governor Rick Scott in the current budget, for example — is effectively added to the state's reserves. Indeed, Florida Statute 216.179 actually forbids the governor from reallocating appropriations from vetoed programs.

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Councilwoman Sherri Myers asked attorney Alistair McKenzie — who is also representing her in the council communication lawsuit — to provide a legal opinion about the mayor’s veto power. According to McKenzie, “There is no basis whatsoever in the law or the City Charter for the proposition that a veto can be an affirmative act which moves, alters, amends, or reallocates funds.” He says that the city charter uses the terms “veto” and “line item veto” without any definition that would “broaden or alter the common understanding of those words as expressed by the Supreme Court of Florida,” and therefore the mayor’s veto power should be construed in the same context as the Florida governor’s veto power.

McKenzie cites the 1980 case *Brown v. Firestone*, in which the Florida Supreme Court ruled that the governor’s veto “is intended to be a negative power ... It is not designed to alter or amend legislative intent ... the veto must, in effect, destroy the fund.” Furthermore, the court’s 1985 ruling in *Thompson v. Graham* said, “The governor may not reassign vetoed moneys to other uses; he can neither create projects nor require the legislature to do so. The funds vetoed in this appropriation remain unexpended rather than being used for a different purpose.” Aye, but here’s the rub. Even if council succeeds in its assertion that the mayor can’t use his veto to reallocate funding, it’s an empty victory. The mayor will still be able to fund the marketing campaign in largely the same way he has already funded it: with a memo.

Gaining purchase. Earlier this year Mayor Hayward contracted with the Tallahassee-based Zimmerman Agency for two major projects: a branding campaign worth \$82,500 and a three-year marketing contract with a base fee (i.e. retainer) of \$474,000 a year. Neither project was budgeted for FY 2012, and neither project was brought to the council for discussion or approval. For all the talk of the new charter, it’s surprising how little that document has to say about purchasing. It’s the City Code of Ordinances, rather, that grants the mayor his purchasing power. Section 3-3-2 of the city code says the mayor may purchase commodities and services up to \$25,000 without council approval or even a competitive bidding process. If a vendor is a certified Small Business Enterprise (SBE), the limit jumps fourfold to \$100,000. Anything beyond that, though, “must be approved by council prior to purchase or contract,” unless it was “specifically adopted in the annual budget or appropriated by council.”

How, then, do we explain the two Zimmerman contracts? They’re both in excess of \$25,000 — one of them is in excess of \$100,000 — and the Zimmerman Agency, a subsidiary of the corporate conglomerate Omnicom Group, is definitely not an SBE vendor. The answer can be found in a memorandum, entitled “Mayor’s Purchasing Authority,” authored last year by Finance Director Dick Barker. It describes a February 17, 2011 meeting where Barker met with Mayor Hayward, Assistant City Administrator Al Coby, City Attorney Rusty Wells, and Assistant City Attorney Susan Woolf to interpret the city code and determine the mayor’s purchasing authority. “At the conclusion of the meeting, all were in agreement of the interpretations and the purchasing authority granted to the Mayor,” Barker wrote.

One of the key determinations in the memo relates to this portion of the city code: “The purchase of commodities and services that have been specifically adopted in the annual budget or appropriated by council may be contracted for or purchased by the mayor without further action

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of council.” “Therefore,” the memo states, “as long as the commodity or service has been appropriated, the Mayor may purchase it without going back to council regardless of cost.”

It goes on: “The glossary of the City’s annual budget states that specific appropriations are at the department, program and/or line item level.” That last part’s the real kicker. Because the budget’s glossary defines department-level funds as “specific appropriations,” the memo asserts, the mayor can unilaterally contract for any commodity or service in the budget, “regardless of cost.” Combine that with an innocuous-seeming power granted by the city council’s policy manual (“The Mayor shall have the authority to transfer appropriations between expenditure categories and between departments or programmatic activities”) and you’ve got the mother of all loopholes. To wit: if there’s unspent money somewhere in the budget, it can be reallocated by the mayor to a different department and for practically any purpose, all without council approval.

Take the city’s marketing contract, for example. While part of the Zimmerman retainer was covered by existing enterprise appropriations (e.g. the airport’s advertising budget), most of it — \$20,000 per month — had to come from the general fund. Since this program wasn’t in the FY12 budget, money was moved around from various departments: \$11,667 per month from MIS, \$4,167 per month from the City Administrator, and \$4,167 per month from Neighborhood Services. In the budget passed by council, that money was allocated to line-items identified as professional services, salaries, and advertising for those three departments. Under the standing interpretation of the mayor’s purchasing authority, however, those funds were repurposed — again, without approval by the city council — and sent to an advertising agency in Tallahassee.

Councilwoman Megan Pratt and others have brought up this issue in the past and are increasingly frustrated with how easily the budget can be changed after its passage. “In theory, we’ll soon have a budget for the city,” Pratt said at Monday’s Committee of the Whole meeting. “We need to ask ourselves if it’s worth the paper it’s printed on.” “If we decide to fund somebody in MIS, which we’re hearing was lacking in performance, that money could then turn around and be used for advertising,” she continued. “That’s really not what I read the charter as intending when the pro-charter group said that all projects must be in the budget and approved by council.” Councilwoman DeWeese echoed those remarks, criticizing the “interdepartmental moves” used to fund the Zimmerman contract with unfilled staff positions. “Obviously it worked from the accounting standpoint,” she said, “but that was a completely different use of funds than what was contemplated and approved in our budget.”

Dr. Pratt made a motion asking **Mr. Messer** to draft an ordinance based on recommendations she had discussed. “I certainly have no objection to drafting the ordinance, but I’d just appreciate another two weeks,” **Messer** said. “I want to coordinate with Mr. Barker. It’s sort of, ‘you want it bad, you get it bad.’ I’d like to give a little more thought than the next council meeting, but I don’t have to take all year.” Because the mayor’s purchasing authority is not set out in the charter, but is based a combination of ordinances and policies — indisputably the realm of council — it would be relatively easy for council to make alterations. Until they do, the significance of any particular line-item veto is negligible.

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Inweekly.net
Sept 26, 2012

The Buzz

AG Snubs City's Audit Process The selection process for an accounting firm to audit the city of Pensacola's financial statements was filled with controversy—council challenges, tie votes, protests, a motion to reconsider and now this opinion from the attorney general. In a Sept. 19 letter to the city, Florida Attorney General Pam Bondi informed officials that the original request for proposal (RFP) for an audit firm that was created by City Finance Director Dick Barker and found to be defective could not be made valid by an approval by the council's audit selection committee. By law, the audit committee is required to create the RFP for the annual financial audit. Instead, Barker created the factors to be used in evaluating the audit services, thus invalidating the RFP. Once the RFP was issued, the audit committee couldn't simply make it valid by approving it after the fact.

The audit issue came to light during the Pensacola City Council's May 7 Committee of the Whole meeting when Councilwoman Maren DeWeese brought up the audit committee. She argued that the committee—not solely city staff—should have input into the RFPs and also felt that the committee's composition should be reevaluated. "It's for us to appoint the entire committee, it is our decision," the councilwoman said. "This is a legislative function."

In February, the city council had approved selecting an external auditor and the RFP process. It voted that the audit selection committee was to be comprised of: a council member, the city's chief financial officer, a member of city staff and a citizen appointed by the mayor. The RFP was similar to the one used in 2007. Prior to the May 7 meeting, DeWeese had laid out her argument in a series of letters to city administration. She contended that the current committee composition could potentially present a "taint to the auditor selection process" and requested that the RFP process, which began at the end of March and wrapped up earlier this month, be reassessed. "If the process moves forward before council takes up the issue, I consider this to be an example of management override of internal controls ..." DeWeese wrote.

In a May 7 letter to the council, City Administrator Bill Reynolds confirmed that the "audit selection committee should have input into the requirements of the RFP per state law," but said "all substantive elements that the statute outlines are included in the RFP. The procedural defect in the action as outlined by the councilwoman can be easily cured by having the constituted committee ratify the actions previously taken."

Although City Attorney **Jim Messer** agreed with Reynolds and said the situation could be remedied by ratifying past actions, several members of the city council were hesitant to bless the already-commenced RFP process. They instead favored starting the process over with a new RFP. "Basically, we did not follow our policy, is that correct?" said Councilman Larry B. Johnson. "Most of the requirements of the law have been followed," **Messer** said. "However, if you're asking me if all the requirements of the law have been followed, then no." "If we don't

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ratify it as you just said, we're really setting ourselves up for a legal challenge," Johnson said, anticipating responses from firms already engaged in the RFP process.

To support his May 7 advice to the city council, City Attorney **Messer** had cited the case *Frankenmuth Mutual Insurance v. Magaha*. In that case involving Escambia County Clerk of Court Ernie Lee Magaha, the Florida Supreme Court considered whether the county commission could ratify a contract that Magaha had executed without authority. The Court determined the Escambia County Commission had the power to approve the agreement after it was executed. Bondi determined the Frankenmuth ruling didn't apply because of the special statutory requirements placed on the audit committee. She wrote, "It is questionable, moreover, whether the audit committee's statutorily prescribed functions may be delegated to the financial officer. Absent statutory authority, the discretionary authority of a public official or entity may not be delegated to a subordinate."

The Long Search

The Pensacola City Council may be a bit closer to finding its long-awaited executive staff person. After meeting recently to discuss three finalists for the position, Council President Sam Hall and Councilwoman Sherri Myers decided to present the candidates to the entire board. The most recent twist in the council's search for a council executive was the body's decision to turn to an employment agency for a supply of qualified applicants. Hall and Myers had both interviewed the top three from the agency's pool, which made it awkward when the council president threw a fourth candidate on the table during the pair's Sept. 21 meeting. "It's been two years," protested Myers, "and this would just be changing the process again."

The process of finding a suitable executive has flailed in the past, with pools of candidates being ditched. The meeting to discuss the top candidates had been set up after Myers requested that the council move the process along. "And now we're bringing up someone named David Bailey and I have a feeling there's a little bit of backdoor politicking going on here," Myers said. Hall said that he had recently spoken with Bailey—currently the city manager in Seaside and formerly Pensacola's CRA head—and thought he'd be a good fit for the position. "There is no hidden agenda here," the president said. "I just don't want to miss the opportunity to put the very best candidate in."

Myers said that she, too, had been approached by people interested in applying for the council executive position. Though she considered them to be "highly, highly qualified" for the post, she turned them away because the selection process had already begun. "The process is closed," she said. "It's too late." Members of the public also took issue with adding Bailey to the mix. They complained that the process had gone on too long and singled Hall out as delaying it on prior occasions. "I don't remember clogging it up three times, just twice," he told them. "And I apologize for that."

Councilwoman Megan Pratt, who attended the Hall-Myers meeting as a member of the public, told her fellow council members that she had heard of the Bailey possibility "through the

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grapevine” and considered him to be a “straight shooter.” She said she could support a six-month trial stint, and maybe more. Pratt rejected Hall’s suggestion that a decision be delayed until newly elected council members are seated. “They get on in the middle of November, then there’s Christmas, the there’s blah, blah, blah,” she said. “I don’t want to wait. I want to get this person here.”

Another council member in the gallery, Brian Spencer, said Bailey—who he previously had a working relationship with—had a “level of experience that is hard to replicate,” as well as “institutional knowledge,” but then argued for the sake of the process. Charles Bare, who will soon take Hall’s council seat, said he was “flabbergasted” with the executive search thus far and also suggested that the council stick with the current process due to the “terrible message” altering from that course would send to citizens. He noted that if council didn’t accept any of the three finalists, it could then reopen the pool for anyone—including Bailey—who wished to apply.

The three finalists for the council executive position are Dr. Lila Sams Cox (who works with the SRIA), David J. Murzin (a former state legislator) and Dana L.S. Williams (former Clerk of Court in Destin). Hall had whittled that list out of a five-candidate pool provided by the Landrum employment agency. Hall and Myers will have an expanded conversation on the subject with the full city council soon.

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Studer Community Institute
September 22, 2012

City auditor selected illegally, says Florida attorney general

Author: Ann Regan

The City of Pensacola failed to follow state law for selecting its auditor, according to Florida Attorney General Pam Bondi, and therefore illegally contracted with accounting firm Saltmarsh, Cleaveland and Gund this past July. The likely result of the attorney general's opinion, which she issued on September 19, is that the city council must start the auditor selection process over again in order to comply with state statutes.

"The Legislature has provided a template which must be followed by a municipality before the municipality may choose an auditor," Bondi said in her opinion. "Where the Legislature has prescribed the manner in which something is to be done, it is, in effect a prohibition against its being done in any other manner." The template referred to by Bondi is state statute 218.391, "Auditor selection procedures," which provides a detailed step-by-step procedure for a city council to use to select an independent auditor.

Chief among the state-mandated procedures is that the city council's audit committee must establish factors to be used in evaluating potential auditors and must issue a request for proposals (RFP). Furthermore, the audit committee's RFP process must be open to the public. The city failed to follow these steps, Bondi determined.

The city's troubles began back on February 20, when the mayor's office placed a discussion item, "External Auditor Selection," on the council's agenda and recommended it follow the selection process detailed in the city's Financial Planning and Administration Policy. Neither City Attorney **Jim Messer** nor other top-level staff (nor anyone on council for that matter) was aware that the state had its own procedures which supersede the city's. As a result, the RFP for a city auditor was issued by Dick Barker, the city's chief financial officer, instead of by a council-appointed audit committee, as mandated by statute. The attorney general called the RFP issued by Barker "defective" and "contrary to the requirements of the law."

Councilwoman Sherri Myers was first to point out that Barker's RFP contained paragraph after paragraph of legally non-compliant language. When **Messer** repeated to the council that the RFP could be ratified with the existing language, Myers, an attorney herself, challenged his legal reasoning and successfully got the council to back her request to obtain the attorney's general's opinion. Myers said that as a result of Messer's actions, the city will probably be faced with rescinding Saltmarsh's contract, and she wants **Messer** to pay for any resulting financial damages to the city. "Either **Messer** should pay for his legal inability out of his own pocket, or his malpractice insurance should pay for it," Myers said.

On May 7, the city council became aware of the state statutes and selected a new audit committee, chaired by Diane Mack, whose first task was to bring the city back into compliance

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with state law regarding the RFP. At the committee's first meeting on May 17, Barker presented the committee with two options, both of which he said had been confirmed by **Messer**. The first option, which Barker strongly advocated, was for the committee to ratify Barker's RFP. The second option would be for the committee to begin again and issue a new RFP.

Chairwoman Mack sought the opinion of **Messer** regarding the validity of ratifying Barker's RFP. In a written opinion to the audit committee dated May 21, 2012, **Messer** assured the committee, "Ratification will validate the RFP and enable the Committee to continue with the selection of an auditor." Wrong again, said Attorney General Bondi. "An audit committee's statutorily prescribed function to create a request for proposals may not be delegated to a subordinate or other entity," Bondi wrote. "The committee may not, therefore, ratify a defective request for proposals which was created by the county's [sic] financial officer contrary to the requirements of the law."

By ratifying the faulty RFP, the option of starting the RFP process anew was taken off the table. The audit committee reviewed the proposals of the four accounting firms, ranked Warren, Averett, O'Sullivan and Creel as the number one firm, and sent its recommendation to city council. The accounting firm of Saltmarsh, Cleaveland and Gund protested the committee's ranking process to the city council. The city council eventually accepted Saltmarsh's protest and decided that the city's auditing service contract should be awarded to Saltmarsh.

To complicate matters, Council President Sam Hall suggested that the council simply renew Saltmarsh's contract from 2007, rather than negotiating a new contract. That contract had been negotiated, not by the city council, as required in state statute 218.391, but by city staff. Again, **Messer** said nothing to council members about the illegality of signing the amendment to the 2007 contract. With no objection being heard from the city attorney, the council went along with Hall's suggestion.

Saltmarsh has been the city's independent auditor for decades. When Saltmarsh was awarded the last five-year contract in 2007, state statute 218.391 had already been on the books for two years. Councilwoman DeWeese said that Hall was aware of that when he recommended amending the 2007 contract, yet no one — Hall, **Messer**, Barker, or anyone at Saltmarsh — spoke up. Both DeWeese and Myers said that in order to comply with the attorney general's opinion, the entire selection process will need to be restarted. Incoming Councilman Charles Bare, who will take over Hall's at-large seat in November, said the selection process had been "rammed down the audit committee's throat by Dick Barker and the executive branch of the city government," and that he would work with council to resolve the issue. "The city council's duty to select an outside accounting firm to audit city operations is an important check and balance on the power of the executive branch that cannot be taken lightly," Bare said.

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Studer Community Institute
September 18, 2012

Hayward vetoes budget amendment

Author: Joe Vinson

On Monday afternoon, Mayor Ashton Hayward issued the first veto of his administration and the 2010 charter, but it's not yet clear if the veto will have the effect he intended. Last Wednesday, Councilwoman Sherri Myers kicked off the second public hearing for the FY 2013 budget with a motion to remove a large chunk of funding from the ongoing (and increasingly embattled) marketing contract with the Tallahassee-based Zimmerman Agency, valued at \$1.2 million in the proposed budget with appropriations split between several departments. Myers singled out advertising line items in two departments: the mayor's office, which increased from \$200 to \$50,200, and MIS, which increased from \$2,500 to \$172,500. She proposed reducing those line items to their FY 2012 levels and applying the \$220,000 difference to the council's own professional services budget.

"I want you to remember that the mayor has many other resources at his disposal to promote himself and his office," Myers said. "We need to increase our budget, and this is how we do it." A long discussion ensued about the value and purpose of the marketing campaign, with several council members arguing that it was not a good use of city money. Councilwoman Megan Pratt pointed out that part of Mayor Hayward's campaign platform was to eliminate government duplication by collaborating with other agencies focused on economic development. "Going alone on advertising doesn't really seem to mesh with that, and we're duplicating the efforts of the TDC, the chamber, and local businesses," Pratt said, noting that the proposed budget would spend \$400,000 more on advertising than the previous year. "Just to put it in a context, that's more than we spent for the entire Westside Library."

Councilman Larry Johnson made the point that a marketing campaign is only as good as its product. He recounted meeting a woman on a recent trip who said she had considered moving to Pensacola, but changed her mind after reading articles online about the rash of drive-by shootings in the area. "It wasn't because we didn't have an adequate rebranding effort, or we weren't slickly advertised, or we didn't have a cool slogan," Johnson said. "It was crime." Councilwoman DeWeese asked about the possibility of defunding the entire Zimmerman contract and allowing the individual enterprises to continue their marketing efforts through supplemental budget resolutions. She had made a similar inquiry at the first budget hearing, but city staff still wasn't sure if it would be a breach of the contract executed by the mayor's office. "I have not examined the terms and conditions of the contract, so I'm not able to answer that question," said City Attorney **Jim Messer**. "I certainly can get the information and we can take a look at it," said City Administrator Bill Reynolds, "but I don't have any specifics on the Zimmerman contract itself that I can offer."

City CFO Dick Barker strongly cautioned the council against defunding the entire advertising budget, saying that it would be extremely disruptive to the city's enterprise operations.

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Ultimately, the council approved Councilwoman Myers’ amendment 5-3, removing \$220,000 from the mayor’s office and MIS budgets and adding it to the council’s professional services budget. Councilmen Hall, Spencer and Wu were opposed. Councilman Johnson proposed a second amendment, which redirected \$120,000 from the mayor’s office budget — not coincidentally the same amount as Chief of Staff John Asmar’s contract — into the Pensacola Police Department’s training fund. That amendment passed 7-1 with Councilman Wu as the lone dissenter. The amended budget was adopted by an identical 7-1 vote.

On Monday afternoon, Mayor Hayward announced that he was using his line-item veto power on the council’s first amendment. “Creating economic opportunities for our City remains one of my top priorities,” he said in a statement. “To do so, we need the right tools. Let’s build on the momentum of the past 20 months and tell Pensacola’s story not only to ourselves but to the rest of the world. Now is the time to continue to move our City forward, not to place obstacles that may thwart our progress. It is time to elevate our efforts.”

The mayor did not veto the second amendment, but rather “took issue” with it, noting that Police Chief Simmons had received all the training dollars he had requested and did not seek out additional funding. “I am concerned about the process in which this budget amendment came about, which I will discuss further at a later date,” Hayward said. However, it’s not entirely clear what power the mayor’s veto actually has. According to the charter, “The Mayor may veto any ‘line item’ in a budget or appropriation ordinance or resolution within five (5) days of adoption by City Council.” That seems to state that the mayor can only veto a line-item of the amended budget as adopted by council — not the amendment itself. While this may seem a minor distinction, it would mean that the mayor could keep the council from giving itself \$220,000, but he wouldn’t be able to reallocate that money back to the marketing campaign.

According to the PNJ’s Nate Monroe, City Attorney **Jim Messer** has since given the opinion that “the effect of the veto is to reverse Council’s action, placing those dollars back where originally budgeted prior to the line-item change that was made.” In other words, the mayor expects to keep his marketing campaign fully funded — unless the council can come up with the sixth vote needed to override his veto. It’s worth noting that the line-item veto power in Pensacola’s charter was inspired by the St. Petersburg charter. That document offers a bit more information on the veto power: “If the total effect of all vetoes of the Mayor would be to cause expenditures to exceed revenues as projected and contained in the adopted budget, then all vetoes of the Mayor with respect to line items of the budget shall be null and void and all items vetoed by the Mayor shall remain in the budget.”

Interestingly, St. Petersburg’s own Charter Review Commission considered an amendment just last year that would have unequivocally answered this exact question: “each amendment to the Mayor’s recommended budget shall be in the form of a line item and subject to the veto provision of Section 4.04(c).” However, that amendment didn’t make it to the St. Petersburg ballot to amend the charter — and it definitely isn’t part of Pensacola’s charter as approved by voters in 2009.

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Messer's opinion brings up the old question about who the city attorney represents in conflicts between the mayor's office and the council. Indeed, one of the reasons why Councilwoman Myers sought to increase council's appropriations was to contract legal counsel when necessary; she has retained her own attorney in a lawsuit against the mayor related to his memo directing council members not to communicate directly with city staff. Without a clear precedent to settle the matter, this too may need to be resolved in court.

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Inweekly.net
August 8, 2012

Dysfunction Junction
What's Your Malfunction, City Hall?
Author: Jeremy Morrison

There's a rift at Pensacola City Hall. It's a contentious chasm that has suffered from both nurture and neglect. "Clearly, there are some issues between the council and the mayor right now," Pensacola City Councilwoman Megan Pratt said recently. The rift has existed for more than a year. Ever since Mayor Ashton Hayward took office as Pensacola's first strong mayor. It is often referred to as the "growing pains." "One might also call it 'maturation of a process,'" offered Councilman Brian Spencer, explaining that he feels the awkward evolution should be "anticipated and tolerated." "I think the discussions regarding the dynamic of the relationship of the council and the mayor are necessary and productive," he said.

When the city of Pensacola switched from a mayor-council form of government to a strong mayor system, it was a big shift. It was a shift in both logistics and mentality. Whereas the mayor had previously been a largely ceremonial position—best suited for riding to ribbon cuttings in the backseat of a parade-route convertible—this new model puts the mayor squarely in the driver's seat. City Council, likewise, has had their grip loosened from the steering wheel.

This shift in governance model has resulted in dramatics, theatrics and legitimate questions as the two branches—executive and legislative—struggle to arrive at a symbiotic existence. City council has tended toward exhaustive discussions and public displays of discontent. While some members have lobbied for a calm, quiet and perhaps unquestioning transition, others squawk, squabble and tirelessly search for the boundaries of their new home within local government. "Let's sit down and have us a little powwow and get it together so we can look more intelligent to the public," Councilman John Jerrals has suggested.

The mayor, meanwhile, appears content to play a confident ostrich. It's a neat trick—head held high, but buried in the sands of denial. "I'm not gonna engage in it, I don't need to engage in it," Hayward said, effectively cranking the radio to drown out council's grumbling in the backseat. "I try not to look in the rearview mirror and focus on what I'm doing."

The Growing Pains

The contention between Pensacola's city council and its mayor is played out in a variety of venues—the budget, the Community Redevelopment Agency, economic incentives and personnel issues. One way or another the rift becomes evident at nearly every council meeting. Back in May, the matter blew up in spectacular fashion when Mayor Hayward issued a memorandum informing council members that all communication with city staff would need to be channeled through the mayor's office. "I have not decided yet how I'm going to address the

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mayor’s memo, but I am not taking this sitting down,” Councilwoman Sherri Myers told her fellow board members at the time.

Soon thereafter, Myers filed a lawsuit against Hayward. While the mayor contended he was simply enforcing a longstanding rule that would allow for more efficient operations and prevent political influence, the councilwoman felt Hayward had overreached his authority. “In a nutshell, this is about the separation of powers,” Myers said a few hours after filing her suit. “One branch cannot interfere with the powers of the other—that’s illegal.”

Like most of the disagreements between council members and the mayor, this lawsuit is rooted in questions about the city’s new charter. Each side of the equation usually uses the document to back up their position. “It’s not going to get better unless everybody lives by the charter,” Myers said in July. But there are varying views of the charter. Councilman Jerralds has repeatedly requested that city council “go page by page” in an effort to wrap their heads around the new model of government laid out in the document. He has pushed for this since before the charter’s passage. “I said, ‘hey guys, let’s look at this,’” Jerralds said. “Before you jump into it, in the water head first, let’s look at it—what does it say?”

Mayor Hayward said that he expected such growing pains. When conferring with the heads of other cities as he prepared to take office, the mayor was warned to brace for some turbulence. “Every mayor I’ve talked with, that’s a strong mayor, said that the first two years are a challenge,” Hayward said. “It’s not the same-o, same-o anymore.” He said the same thing recently when appearing on the locally-produced television program “Within Reason” with attorney and host Bob Kerrigan. “They said the first two years are going to be challenging, it’s a new form of government,” Hayward told him. The two men sat casually on the set. Hayward was dressed in his trademark business-casual—dark blazer, unbuttoned collar, dash-of-color kerchief.

Kerrigan, a supporter of the charter and Hayward, described the city’s new structure as “the perfect form of government” and provided a friendly format for Hayward to address the ever-more visible rift. “I think everyone’s heart’s in the right place,” the mayor assured. A couple of weeks earlier, up in his seventh floor office at city hall, Hayward had brushed off the rift. Questions about any fractures in his relationship with city council tended to evoke eye rolls and heavy sighs. “There is nothing to address,” he said. “It’s a minority of council. And really, I’m not sure it’s even a minority anymore, I think it’s one person.”

Though the mayor declined to “name names,” it can be assumed that “one person” is Councilwoman Maren DeWeese, who has repeatedly made contentious statements in public meetings and on her blog. While other members of council have expressed concerns, DeWeese has been, at the moment, the most vocal. However, the mayor isn’t buying into the idea that all the council is conflict with him. “I just got off the elevator and Ron Townsend hugged me,” Hayward said. It’s true, he does enjoy good relations with much of the council, and even DeWeese has repeatedly stated she is supportive of the charter and mayor’s efforts to lead the city. But everyone recognizes the rift. “I’m basically watching it as it unfolds,” said Councilman P.C. Wu. And council members who are decidedly in Hayward’s camp concede the need for

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some remedy to the rift. A characteristically exhausted Councilman Townsend recently noted as much, "I really don't need the frustration." "Communication has really got to improve between council and the mayor's office," the retiring Townsend said.

During July's marathon budget sessions, the rift was apparent throughout. The entire council weighed in at one point or another, with several expressing varying degrees of concern. Hayward termed the ongoing displays as "actually comical" and urged "unity." "It is what it is," the mayor said. "I think your real question is, 'Is council going to get on board?'" But that doesn't appear to be the lingering question emanating from council. Questions about charter specifics and each branch's role permeate council discussions. "I think that there needs to be some intervention," Pratt said in late July. "It's gotten to the level where there is enough mistrust on different levels that it's not going to resolve itself."

The Training Wheels Phase

The strong-mayor form of government did not happen overnight. Unsatisfied with a council-mayor model they considered lethargic, ineffective and unaccountable, a group of citizens, primarily from the business community, began a drive to make a switch. John Peacock, a co-chair of the group, requested in 2007 that the city council examine the city charter. "We believe our citizens should give serious consideration to a 'strong mayor' type of government in order to expedite our renaissance," wrote Peacock in a letter to the council. "An elected executive mayor would be in a position to develop a vision, then plan, lead and implement the envisioned changes."

Eventually, the council formed a charter review commission. Attorney Crystal Spencer was chosen to chair the commission and oversaw its review of the charter and consideration of possible changes to the governing model. "The city manager was, frankly, running our government and not accountable to the citizens," she said. "It goes back to the accountability. Who did we look to for not moving Pensacola forward?" The review commission conducted an extensive analysis of the city's charter. They studied governing documents of other cities and heard from experts and the public.

Recently, Spencer, whose husband was elected to the council in 2010, reflected on the old council-mayor system. "By its very nature, it makes it difficult to have a single vision in leading the city," she said. "That form of government did not allow for a person with a vision to move forward." The review commission eventually recommended a new charter based on the strong-mayor model, and city council offered it up to the voters. Spencer remained active in the process as the chair of Believe in Pensacola, a pro-charter political action committee.

The current city council members were pretty much split down the middle when it came to adopting a new system. Jerralds and Townsend opposed the charter referendum but have accepted the change and largely supported the mayor. Wu, who also opposed the switch, routinely keeps council debates dignified when weighing in as other council members begin piling on Hayward and his administration. "Of all the people sitting around the table, I'm

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probably the one that fought the charter the hardest," Wu said during the budget sessions, advising his cohorts to wait-out any issues they may have with the mayor and trust the voters. "If it doesn't work, in two years people can say, 'doggone it, I've had enough.'"

Other council members feel differently. They think the body should better define itself and its role. "For the last year, the council has said, 'we're going to be steady, not do anything,' while the mayor gets up to speed," said Pratt. "I think at this point it is important to ask 'how do we function?'" That's a question council has grappled with since Hayward took office. In extreme scenarios, like Myers' lawsuit, the brawl spills into the streets where eyes are blackened and teeth are knocked loose. "I'm sorry there's a lawsuit going on," said Pratt, before conceding that charter-related questions may be best suited for the court system. "I think at this point, the amicable discussions aren't solving it."

City Attorney **Jim Messer** has repeatedly pointed the council toward a courtroom. He did so again recently in the budget workshops when it began to "devolve back to what we've been struggling with since my first day on the job." "This is not an insolvable problem," **Messer** told the council, explaining that judicial clarification could prevent them from "chasing our tails in these meetings." Until a court said otherwise, the attorney continued, Hayward would be the final authority when it came to charter disputes with council members. "The mayor's sort of like Bruce Springsteen, at this point," **Messer** said. "He's the boss."

Myers is the only member of council to pursue the judicial path. Others, primarily Jerrals, continue to push for an internal examination of the charter via a council retreat. He's looking at January 2013. Councilman Spencer would prefer the council continue to work through the issues as they arise. While he sees some of the drama as "more disruptive than productive," the councilman is confident the body can iron out the wrinkles on their own. "As messy and cumbersome as it may appear to the public, I'd rather work through these issues in public," Spencer said.

During the budget workshops, the councilman told his fellow council members that he would be glad when the "training wheels" came off. "Once that happens," he later elaborated, "we can be more agile, we can be faster, more nimble—when I say 'we,' I mean the administration and council as a whole."

Seventh Floor Vibe

While Myers' lawsuit pertaining to Mayor Hayward's memo involves specifics, much of the unrest among some members of council seem to be based on a general vibe they perceive coming from city hall's seventh floor executive offices, where the mayor, city administrator, chief of staff and city attorney have their offices. It's like they don't feel the administration is always being square with them. Paul Jones, who heads up the city's Management Information Services (MIS) Department, is new on the job. Which explains why he seemed a little dazed by the focused line of questioning during his budget presentation. "My whole career has been IT," Jones told the board, when Councilwoman Myers asked him for some background.

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The councilwoman was asking job specific questions. Establishing that Jones supervises employees, including managers. Running down budget numbers. Council President Sam Hall took a shortcut and asked the obvious question: "Who's your department head?" It's a fine point, but important. The city council approves department heads. "Well, I run the department," Jones replied. "Oh, so you're the department head?" Hall said. Jones knew it got weird at this point, he just wasn't exactly sure why. Later, Chief Financial Officer Dick Barker would clarify—"I'm not taking anything away from him"—that Jones answers to City Administrator Bill Reynolds. "Nice cover," Hall told the CFO. "He doesn't know the shell game that they like to play," Pratt said of the new MIS head.

Earlier they had freaked out about not being able to approve the head of the Housing department, because it was not listed as a "major" department—"I just think that this is just a bit of a semantic game for us to keep in mind, because I think a \$16 million dollar budget is a major part of our city's budget," said Pratt. The rest of the council laughed, chided the department head, asked if she would take the "bait." Pratt said she found "that kind of game playing offensive in light of the intent of the charter" and asked the city attorney for a clarification on what constituted a "major" department. "I think that this council—all the laughter and nodding of heads—I think there's an agreement that \$16 million is not minor," Pratt said.

Council members have complained of the seventh floor's style, painting it as aggressive. In April, Hall said members of Hayward's staff had "threatened" him over a Pen Air deal before the council. When the final vote was taken, Councilman Larry Johnson told the council he felt "like I've got a gun held to my head tonight." Hall later said he had discussed his concerns with the mayor and been promised a "new day." The council president has declined to discuss specifics of that conversation. "Any disagreements I have with Ashton, I have behind closed doors," he said recently.

Hayward didn't recall the specific conversation, or the "new day" reference. "I think what Sam meant probably was that Ashton was going to address some of the concerns of council members," Hayward said. "I think he was probably just saying 'alright, let's take a break.'" The mayor is visibly uncomfortable discussing this discord. He bristles at the notion that his staff might "threaten" council members, and has requested the personal attacks on his staff stop. "This is the only town I know that is this vicious," Hayward said.

For some council members, the primary, and recurring, point of concern on the seventh floor is the mayor's Chief of Staff John Asmar. This concern is most often voiced by council members Johnson and DeWeese. "I think Mr. Asmar has become a tremendous distraction," said Johnson. DeWeese has taken up the issue on her blog. She's posted Asmar's emails, which, among other things, show a relationship with the publisher of The Independent News. After the Fraternal Order of Police, with whom the city is currently involved in union negotiations, announced it'd taken a 'no confidence' vote in Asmar, the councilwoman requested that Hayward address the issue.

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The mayor shot DeWeese a sharp email, calling her request “ridiculous.” He wrote the union “no confidence” vote was a negotiating tactic and everything else was a personal attack. He said Asmar was directed to share information with the Independent News, Pensacola News Journal and other media outlets. “Why are we ‘Mickey Mousing’ the little things?” he said. “It really is ‘Mickey Mousing,’ too. This is a grown up game.” Hayward shrugged off the attacks and chalked them up to personality conflicts, and noted that the national political scene is packed with hard chargers like Asmar. “When you said that,” Public Information Officer Derek Cosson said during the interview with Hayward, “I thought about Rahm Emanuel. Rahm makes John look like Tickle Me Elmo.”

Asmar has a reputation as a heavy. Effective, but blunt. “Everyone’s not going to like everyone’s personality,” the mayor said. The chief of staff is perceived in certain camps as having too great an influence on the mayor. The notion has given way to terms like ‘Puppet Master’ and ‘Darth Asmar.’ “There are no conspiracies on the seventh floor,” Hayward insisted. “This is not the John Asmar show. It’s easy to find a scapegoat when you want to find one.” The chief of staff also downplays his influence on the mayor, stressing that he is one of many advisors. “The mayor’s his own man,” Asmar said in early August. “He’s a freethinker.”

The chief of staff recalled a recent visit from Councilman Wu, during which he breached the subject with Hayward. Wu relayed the conversation to the council. “There are people under the impression that John Asmar is sprinkling pixie dust and the mayor is walking around like a zombie, not knowing what is happening,” Wu said, explaining that he had taken the issue up with Hayward. “The mayor looked at me and said, ‘I know everything that is happening.’”

While Johnson and DeWeese have waded into the conspiracy theories surrounding the chief of staff, much of the council considers Asmar an infrequent—and apparently amiable enough—acquaintance. Hayward is quick to point out that Asmar recently enjoyed an “upbeat and excited” lunch with Councilwoman Myers. “Let me clarify something, okay, there is no contention between the council and the mayor’s chief of staff,” said Myers, laying the issue at the feet of individual council members. “That should not be translated as the council, as a body, having any conflicts with Mr. Asmar.”

Townsend agrees, “I have a good relationship with him.” Whether it’s the Asmar issue, budgetary specifics or some other aspect of discontent, the mayor has chosen not to hash it out with council. He sits confidently in the driver’s seat, even as his car’s engine threatens to throw a rod. “I’m focused on producing and I’m focused on winning,” Hayward said. “Winning and producing for the city of Pensacola.”

‘Where is the mayor?’

Last fall, citizens flooded a city council meeting because they felt an ordinance proposed by the mayor would negatively target the area’s homeless. They were looking for a chance to engage the mayor, as council considered the ordinance. “One question—where is the mayor?” a woman asked President Hall. “Why can we never see the mayor?” The same question has been asked repeatedly. It’s rare to sight Hayward at a city council meeting. He showed up this summer to

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hand out certificates to citizens recently annexed into the city limits. He also made an appearance to deliver his state of the city address, and back in the spring to rescue the Pen Air deal. Hayward has not sat down with the city council to discuss the rift, the growing pains. “It’s petty and it’s small and it’s the last thing we need to be doing,” Hayward said in early August. “I didn’t run for office so I could be caught up in petty arguments with city council.”

The mayor said he considers his primary responsibility to be revitalizing the city. Selling Pensacola to the outside world. He’s concerned the constant insights into the city’s dysfunctional inner workings will turn off prospective residents and businesses. “I don’t think Pensacola wants to be known as ‘we-can’t-get-it-done,’” Hayward said. “I think people understand there’s a vibe—we’re winners, we know how to get things done.” The mayor said he is confident that any issues between his office and the council will be resolved as the new form of government progresses. “I think at the end of the day that will come to fruition,” he said on his way back from a public relations trip to New York City.

Jerrals sees it differently. He believes some healthy, in-person communication would be beneficial for the council and the mayor. “I just think it’d be a good idea to sit down and talk,” the councilman said. “It’s like a marriage. It’s amazing what a little face-time will do.” Crystal Spencer, the attorney who chaired the charter review commission, said that her group had envisioned some amount of participation. “I think it was contemplated that they mayor would be at some of the council meetings. Not all of them,” she said. “There probably needs to be some better lines of communication.” Pratt agreed, “There’s sort of a lack of communication both ways and it’s feeding on itself.”

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Studer Community Institute
June 12, 2012

Council seeks final word on audit RFP

Author: Ann Regan ·

The Pensacola City Council's Committee of the Whole (COW) voted unanimously on Monday to ask Florida's attorney general (AG) whether the council's audit committee can ratify an invalid RFP and thereby make it valid. City Attorney **Jim Messer** had told the city council and the council's audit committee in May that by ratifying an invalid RFP for an independent auditor, the audit committee could create a valid RFP. At the COW meeting on Monday, Councilwoman Sherri Myers made the motion for the council to ask the attorney general to confirm **Messer's** opinion. That motion was unanimously approved.

Prior to Monday's meeting, Councilwoman Myers explained why she wanted the city council to request the opinion of the attorney general regarding the legality of the ratification process. "The citizens of Pensacola need to be assured that the council did the right thing in selecting an independent auditor. The AG's opinion will help provide that assurance," Myers said. Myers also explained that she needs the support of the city council to obtain the attorney general's opinion because the AG's office will not provide opinions to individual council members.

Myers emphasized that requesting the AG's opinion will not delay contracting with the number one ranked accounting firm to do the audit. And it will not delay that firm's proceeding with the audit itself. The contract negotiation and the audit can move forward at the same time that the council is seeking the AG's opinion, Myers said. "What can possibly be the downside to asking for an opinion from the attorney general to assure the citizens of Pensacola that the council followed a prudent and fair process to select an independent auditor to audit the city's financial accounts?" Myers asked. "There will be no delay in getting on with the audit. But we need to know sooner rather than later that the process was legal." The consequence of the AG returning an adverse opinion regarding ratification is that the RFP process must begin anew.

Myers was prompted to make her request for the AG's opinion when she received a response to her earlier letter to David Martin, the auditor general of Florida. In his response Martin told Myers that she should seek the opinion of the attorney general to confirm **Messer's** opinion. On June 4, Myers had written the auditor general asking his advice about ratification because the auditor general was largely responsible for passing the statutes that set out the procedures for selecting an independent auditor. Among other things the statute requires that the audit committee issue the RFP for the independent auditor position. However, back in March, the finance department rather than the audit committee issued the RFP and four accounting firms responded to the proposal request.

On May 17 the audit committee met to discuss the validity of the original RFP. In response to the committee's questions about the original RFP, **Messer** provided the members with a written opinion. "At this point in time there is no valid RFP. There is no valid RFP because the

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requirement that the Committee provide the factors to use for the evaluation of audit services as set forth in Florida Statute 218.391(2)(a) was not followed in the RFP process," **Messer** wrote. "There are two ways to create a valid RFP: a) the first way is to start the process anew with a new RFP draft and issuance; b) the second way is to ratify the current RFP."

On May 22 the committee met again. At this meeting the committee members did a line by line review of the evaluation criteria of the RFP. The committee found that the criteria of the original RFP complied with the state statutes. Being satisfied with the substance of the original RFP, particularly with regard to the evaluation criteria, the audit committee ratified the RFP and, according to the city attorney's opinion, created a valid RFP.

The RFP that was ratified retained certain language that inaccurately identified the members of the audit committee and inaccurately described the role of the Mayor and administrative staff in the selection and evaluation process. However, Chair Diane Mack called that language "procedural," and at Mack's request, the head of the purchasing department, George Maiberger, informed the firms that submitted proposals, in a written memo, about the procedural inaccuracies in the RFP.

In her letter to the auditor general, Myers explained all of the circumstances surrounding the decision by the audit committee to ratify the original invalid RFP and then asked the auditor general about the ratification. Deputy Auditor General Ted Sauerbeck replied to Myers' letter.

"In your letter, you asked the question 'Did the audit committee create a valid RFP by ratifying the original RFP issued by the finance department,'" Sauerbeck wrote. "While we are not authorized to opine on legal matters, the Florida Attorney General is authorized to render opinions on legal matters pertaining to local governments." "The City's audit committee may want to review the Auditor Selection Guidelines located on our Web site," he added. "Although the Guidelines are non-mandatory, governmental entities would benefit from using them to help ensure a quality audit. By adhering to the Guidelines, entities can demonstrate to constituents that a prudent and fair auditor selection process was used."

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Studer Community Institute
May 9, 2012

Much ado about auditing

Author: Ann Regan

At Monday's Committee of the Whole meeting, the Pensacola City Council wrested back control over the selection process for the city's independent auditor — a process that had been initiated by the mayor's office and subsequently become mired in miscommunication and politics. It all started at the February 20 Committee of the Whole meeting, when the mayor's office placed Item 10, "External Audit Selection," on the agenda with a one-page memo advising the council members that the five-year contract with the current auditor, Saltmarsh Cleaveland & Gund, was set to expire after the completion of the 2011 audit. According to the committee memorandum:

In March 2007, City Council established a process to select the City's external auditor by a selection committee consisting of the Director of Finance, one staff member, one member of City Council, and one citizen. ... Should City Council not wish to extend the current external auditor contract, the Financial Planning and Administration Policy states, "The City shall utilize the Request for Qualification (RFQ) procedure for external audit services. An audit selection committee (appointed by City Council) shall present a recommendation to City Council for approval." ... To ensure we have a contract in place for a timely audit of fiscal year 2012, there should be a signed agreement no later than June 1, 2012. City Council can either extend the current contract or put out an RFQ.

This information was incomplete, however, and council members, without a staff of their own, were not informed of other important considerations for the selection process — namely, Florida Statutes 218.39 and 218.391, which provide a detailed, step-by-step procedure for selecting an independent auditor.

After a brief discussion by the council about the merits of an RFQ process and no further discussion of the membership of the audit selection committee, they voted unanimously to "establish a process to select the City's external auditor by a selection committee consisting of the Chief Financial Officer, one staff member, one member of City Council, and one citizen using the Request for Qualifications process for a full-scale competitive process for selection of independent auditors as recommended (best practice) by the Government Finance Officers Association (GFOA)." Two months passed with nothing occurring at city council regarding the auditor selection or appointments to the selection committee. Then, on April 23, the mayor's office placed an item on the agenda of that day's Committee of the Whole meeting with the following memorandum: "On March 30, 2012, the Financial Services Department posted an RFP for Professional Auditing Services for a contract period to begin June 2012. The Audit Selection Committee is comprised of the Chief Financial Officer, staff designee, a citizen to be appointed by the Mayor and a member of City Council. Responses to the Proposal are due on May 3, 2012..."

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Councilman Townsend nominated Maren DeWeese to serve as the council's representative on the selection committee, but before it went to a vote, Dr. Pratt noticed that the "one citizen" on the selection committee had been changed to "a citizen to be appointed by the Mayor." "Since the audit function falls under the council, I think it would make sense for us as a council to consider whether we should ask to appoint the citizen appointee," she said. Several other council members agreed and asked City Administrator Bill Reynolds to explain the change. "Once again we're back in old familiar territory," Reynolds said. "You have a leader of this form of government, which is the mayor. You have the council that has its role and responsibilities as well." "But it's the mayor being audited, really," Council President Hall interjected. "If this council has issues with the members of the committee, then we can restructure the committee to however the council wants," Reynolds said. "It is a function of council for the audit, but I would hope that you would want to be more inclusive as opposed to exclusive."

The council then debated which branch of government was responsible for the audit under the new charter. "I've reviewed it, and I don't think the word 'audit' is specifically in the charter," said City CFO Dick Barker. Councilman Jerrals pointed out that the charter says, "unless otherwise provided by law," the city council was responsible for committee membership. Around and around they went before moving on to the next agenda item. Yet if anyone at the meeting had just checked the Florida statutes, there would have been no question about the legal requirements. Section 218.391 clearly states, "The governing body of a ... municipality ... shall establish an audit committee." And the city charter clearly states that the "governing body" of Pensacola is the city council.

By having the Financial Services Department issue the RFP, instead of the audit selection committee, not only did the mayor's office ignore the auditor selection process that was set up by the council, but it violated the mandated procedures of the state statute. In addition, the RFP that went out to firms on March 30 stated, "The Audit Selection Committee will submit a recommendation to the Mayor, who will present his recommendation to City Council for approval."

On April 26, Councilwoman DeWeese sent a letter to the council explaining that, because of these issues and her personal friendships with partners at the Saltmarsh and O'Sullivan Creel firms, she would not accept the nomination to the auditor selection committee:

I believe that it is the role of Council to oversee the audit process of the City. In fact, the annual Comprehensive Annual Financial Report which includes the audit report is presented to Council by the Mayor. Inclusion of the City CFO and a staff member on the auditor selection committee amounts to the auditee being able to select the auditor. Additionally, the one citizen noted in the current RFP is presently a Mayoral appointment. Once again I see this as potentially problematic as the Mayor's office is also an auditee of the selected auditor. Therefore, I believe that the auditor selection process should be comprised of Council members and Council appointees only with the CFO being present only in an advisory role. At the same time that DeWeese sent her letter to the council, she requested that the discussion of her letter be postponed until the next Committee of the Whole meeting, May 7.

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The next evening, April 27, DeWeese emailed Barker, Reynolds, and City Attorney **Jim Messer**, asking them to consider repealing the RFP before the May 3 submission date. "Obviously, it would be better to repeal the RFP than have Council ask for resubmissions after it deliberates," she wrote. When Barker, **Messer** and Reynolds, failed to get back to DeWeese by May 2, DeWeese emailed them again that morning. "If the process moves forward before Council takes up the issue I consider this to be an example of management override of internal controls specifically the disregard of a Council agenda item by management that could materially change the Auditor RFP process," DeWeese wrote. "If Council does not change the process, no harm is done and the RFPs are opened next Friday. If Council changes the Committee and that Committee wants changes to the RFP then your continued movement forward with the current RFP will taint the auditor selection process. Do we really want to taint the process being followed for hiring our Independent Auditor with management override of internal control?"

Having still received no response, DeWeese forwarded her correspondence to the city clerk. The next day, Reynolds responded, "We have looked into your request. Absent specific factually-based examples of taint to the auditor selection process, we are disinclined to stop that process." According to a representative of the purchasing department, the four proposals received were opened on May 3, but the pricing remains sealed and the proposals are awaiting review by a reviewing committee.

On Monday, May 7, the Committee of the Whole met and discussed, again, the process for selection of the city's independent auditor. DeWeese suggested that the new selection committee be made up of two council members, two citizens, and a CPA to be chosen by council. DeWeese said that it was important that the selection committee have input into the RFP. At one point in the discussion DeWeese asked Reynolds about his statements that the auditor had to be selected by June 1. Reynolds said that he had checked with the finance department people and others and they all agreed that this should be done by June 1. In fact, section 218.39 states that the independent audit can be done within nine months after the city's fiscal year end, which is September 30, 2012.

Councilwoman Myers said that, in her opinion, the mayor was attempting to "usurp the power of the council in sending out an RFP on his own," and she was particularly "disturbed" by the language in the RFP that purported to give the mayor authority over the selection process. The city attorney finally responded to the criticisms by Myers and DeWeese after being asked directly by Councilman Johnson whether Myers was right in her remarks. **Messer** responded yes, the RFP process was "flawed." Without identifying the flaw in the procedure, **Messer** suggested that the auditor selection committee might be able to cure the flaw by ratifying the RFP. He conceded, however, that the language regarding the mayor reviewing the selection committee's recommendation should be deleted. **Messer** also said that if the audit selection committee membership was to be changed that the council would have to rescind its action taken on February 23, when it created the selection process. When **Messer** responded to the various council members' remarks, he sometimes referred to the pertinent state statute, but throughout the entire discussion, he never identified the statute nor recited its entirety.

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Myers made a motion to rescind the action taken by the council on February 23 regarding the external audit selection and to appoint a new audit selection committee that, per DeWeese's suggestion, would consist of two city council members, two citizens to be appointed by the council, and a CPA to be appointed by the council. The motion went on to state that all RFP responses will be supplemented by each firm for additional requirements that the council's audit selection committee requests. In addition the motion stated that all language regarding the mayor's reviewing the selection committee's recommendation would be deleted. The motion passed 6-2 with Brian Spencer and John Jerrals voting no.

Following the vote, the council then voted to appoint Sam Hall and Megan Pratt to the new audit selection committee. Nominations for the other three positions on the selection committee are due to the council by Thursday so that they can complete the membership of the committee. After the Committee of the Whole meeting, Myers learned of and reviewed the state statutes that mandate the council's audit selection procedures. An attorney herself, Myers said she found it incredible that the city attorney would have withheld "such important information from his clients that he knew they needed in order to make a decision."

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Inweekly.net
April 11, 2012

KEEP TALKING

While it appeared Pensacola City Attorney **Jim Messer** was ready to go to war over the city's natural gas franchise dispute with Gulf Breeze, city officials have chosen to stick to the negotiating table for now. Mayor Ashton Hayward sent a letter to Gulf Breeze officials April 9 expressing the city's desire to resolve the matter. "He wants to do everything he can to try to execute a contract with Gulf Breeze," said Pensacola City Administrator Bill Reynolds, adding that he thought a "45-day window would be appropriate" for working the issue out.

Pensacola and Gulf Breeze have been attempting for some time to work out differences regarding natural gas franchise rights. While Pensacola—which owns Energy Services of Pensacola—has longstanding franchise rights for all of Escambia County, Gulf Breeze officials have nonetheless begun to provide natural gas to Pensacola Beach. The Escambia County Commission recently granted Gulf Breeze franchise rights to the beach, citing the fact that Pensacola has yet to provide service to the area and stipulating that Gulf Breeze would need to relinquish franchise rights if Pensacola decided to provide natural gas to the beach in the future.

A few days prior to Reynolds' 45-day window estimation, **Messer** had been ready to take the matter to court. The attorney was dissatisfied with the mandated conflict resolution process, feeling it was going nowhere. He had planned to seek permission from the Pensacola City Council at its Committee of the Whole meeting when Gulf Breeze Mayor Beverly Zimmern raised a red flag. "They were all uptight about the agenda item," **Messer** said. Indeed, Gulf Breeze officials had expressed concern over **Messer's** request. City Manager Buzz Eddy said he thought the two entities were still engaged in talks until he saw the matter on the Pensacola City Council Agenda. He said that Pensacola was sending "mixed signals." "It's difficult to focus on offense and defense," Eddy said. Reynolds disagreed.

"There are no mixed signals," **Messer** said, referring to the notion as "nonsense." The attorney said that both paths could be pursued simultaneously, using an analogy to illustrate his point. "The best way I can think about it is a railroad track," **Messer** said. "What happens on one rail doesn't affect what happens on the other rail." According to Pensacola's attorney, it is necessary to lay the groundwork for legal proceedings while, at the same time, attempting to reach an amiable agreement outside the courtroom.

Messer said his original intent in requesting to move the show before a judge was so that he could file an injunction against Gulf Breeze. He said that because Gulf Breeze had already begun providing service, the injunction possibility was not likely. "Gulf Breeze has already turned the gas on, so that's a moot point," **Messer** said. "Once the gas is on the judge is not gonna turn it off—but now it's on the agenda and I can't get it off."

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The attorney told Pensacola City Council members last month that he wished to fast-forward into legal proceedings because he didn't think the conflict resolution process was producing any results. He said today that he did not discuss his exact injunction strategy with the council during its meetings because it would have revealed the strategy to Gulf Breeze officials—"If I talk in public I might as well just call [Gulf Breeze Attorney Matt] Dannheisser up and show him my hand of cards."—and he didn't meet with council members privately on the matter due to Sunshine Law issues. "You see, there's too many moving parts to this thing," **Messer** said. The attorney said that he didn't feel the respective legal counsels could work constructively. "I felt that the negotiations between Dannheisser and I were being affected by our respective personalities," **Messer** said.

After the weekend, Reynolds said that the mayor had contacted Gulf Breeze officials earlier via letter regarding the matter. Legal action will not be considered by the city council at this time. "We're all eagerly anticipating closing that deal with the city of Gulf Breeze," Reynolds told city council members during the Committee of the Whole.

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Inweekly.net
February 15, 2012

Viewpoint: Right to Speak

Author: **Jim Messer**

As the city attorney, I have the unique privilege of not only experiencing the right to speak firsthand at city council meetings, but also litigating First Amendment issues on behalf of the city. My recent experiences with the right to speak triggered this examination of the legal basis of the right to speak. During the last several months, speakers at the council meetings have exercised their right to speak in a manner that causes one to question the utility of the debate. Speakers have freely denounced council members as Nazis, threatened their property and limbs, scorned their morals and religious beliefs, called them out by name in "gangsta" style, held them personally responsible for the lives of the homeless, rambled in lengthy, incomprehensible diatribes on any topic of interest and, my all-time favorite, simply stood up and recited a litany of words, which if uttered anywhere else would have resulted in a trip to the emergency room.

These visceral offerings are justified under the rubric of free speech and debate. They bring to mind the references to the Lincoln-Douglas debates of yesteryear, which are held out to be exemplars of debate. To the contrary, the Lincoln historian, Harold Holtzer points out that "the encounters were brutally sarcastic, featuring highly personal attacks rather than elevated discourse." Oddly enough, the only basis for the right to speak is because the Pensacola City Council has voluntarily extended this right to the citizenry during open forum. There is no legal authority for citizens who are not a party to the proceedings to speak and be heard at council meetings.

Neither the Florida Constitution nor the so-called "Sunshine Law" bestows the right to speak. The law is, quite simply, silent as to citizen participation in meetings. Florida courts have never upheld either a right to speak or participate for a citizen who is not a party to the proceedings. In the 1993 case of *Wood v. Marston*, the Florida Supreme Court stated "nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process." More recently in *Keesler v. Community Maritime Park Associates*, our First District Court of Appeal upheld the CMPA's denial of a citizen's opportunity to speak at a meeting concerning the maritime park.

Proponents of the right to speak have introduced legislation that would ensure the public a right to speak. In an effort to avoid the diatribe, the proposed legislation would also permit reasonable rules to ensure the orderly conduct of a public meeting such as time limits on the speech, procedures or forms that indicate the desire to be heard, position on a proposition, and designation of group representative. The irony of the situation seems to be that the proponents of the right to speak to their government must defer to that same government to legislate their right to speak. By doing so, they will also have to accept government standards that act to elevate the discourse they so avidly seek.

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inweekly.net

January 11, 2012

Dancing on a Pipeline
Who Will Provide Natural Gas to Pensacola Beach?

Author: Jeremy Morrison

Pensacola City Attorney **Jim Messer** rattled off rapid-fire Spanish, before clarifying the translation: Danza de la Muerte, or Dance of Death. "It's an exhaustive process," he explained. The big dance **Messer** is referring to involves Pensacola, Pensacola Beach, Gulf Breeze and Escambia County. Nobody gets a carnation, but at the end of the night there's a natural gas pipeline to be had. Here's the lay of the dance floor: Escambia County granted Pensacola, via Energy Services of Pensacola (ESP), natural gas-rights to the entire county. Gulf Breeze, meanwhile, has set about laying pipes that will enable it to provide natural gas to Pensacola Beach, which is in Escambia County. "In simplest layman's terms," **Messer** told the Pensacola City Council Jan. 9, "it would seem that the city of Pensacola has been snookered."

Gulf Breeze City Manager Buz Eddy doesn't see a problem on the dance floor. "It's under way right now," Eddy said, predicting a summer finish for the project. "We're gonna take a pipeline from Gulf Breeze, put it under the sound and come up on the island." That plan just makes sense, Eddy explained. It will enable the beach customers currently using propane to switch to natural gas. "During Hurricane Ivan we had a lot of the propane tanks wash up over here in Gulf Breeze," he said. Gulf Breeze got the go-ahead last summer to start work on the project from the Santa Rosa Island Authority, which oversees Pensacola Beach. Now, Eddy said, it's just a matter of who gets the franchise fees. "Do we owe it to Pensacola or do we owe it to Escambia County?" he wondered.

Randy Oliver, Escambia County's administrator, said the county was unaware of Gulf Breeze's endeavors. "The City of Gulf Breeze undertook this project without the knowledge or approval of Escambia County," Oliver said in a county statement. The statement goes on to explain the county's position: "Escambia County has no interest in whether Gulf Breeze or Pensacola provides natural gas service to the Beach. Escambia County is committed to seeing Beach residents receive the best possible service at the lowest possible cost regardless of who provides the service. Escambia County will collect the same franchise fee collected in all other areas of the County in exchange for use of the right-of-way, regardless of the service provider."

Oliver said that the county will take up the issue during its Jan. 12 meeting. Staff will apparently "recommend to the Board of County Commissioners that a nonexclusive franchise be offered to the City of Gulf Breeze until and unless the City of Pensacola provides services. This will permit the businesses and citizens in the core of Pensacola Beach to receive this valuable service and protect the City of Pensacola's franchise rights." But **Messer's** in no mood to entertain alternative routes. He's ready to dance. "I just say, sue 'em," Pensacola's attorney suggested.

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But it's not that easy. Governmental entities can't simply sue one another. First, there's the dance. To that end, **Messer** introduced a resolution to city council members. The resolution will be taken up during the council's Jan. 12 meeting. If city council members choose to do so, the resolution will lead into mediation—the dance—and possibly to a courtroom. It's almost romantic. A Municipal Waltz. Or, maybe a Bureaucratic Tango. "It's like one of those old-fashioned dances, where you've got to be introduced and bow," **Messer** said. "Before you touch the girl, you've got to do a thousand different things."

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Studer Community Institute
December 13, 2011

Messer OK'd for city attorney, bonuses questioned

Author: Joe Vinson

Messer contract

In a long and often spirited Committee of the Whole meeting yesterday, the City Council gave initial approval for **Jim Messer** (or rather, the **Messer Law Firm**) to serve as the city's full-time city attorney. Messer was hired as interim city attorney several months ago while the permanent position was considered. An RFQ received responses from three firms: Messer's, Beggs & Lane, and Litvak, Beasley & Wilson. Messer's proposal was the lowest bidder at \$12,500/month (or \$150,000/year) with litigation work billed at an additional \$245/hour. Objections to the contract were raised by council members Pratt, DeWeese and Myers. Dr. Pratt asked about the charter question of whom the city attorney would represent in conflicts between the mayor and council. Messer responded that if a lawsuit were ever filed by the council, for example, the city could hire an outside attorney to represent them before a judge.

Councilwoman DeWeese noted that the contract's proposed five-year duration was potentially longer than the mayor's term of office and that, as a courtesy to his possible successor, it should not exceed the current mayoral term. City administrator Bill Reynolds, who presented the recommendation in Mayor Hayward's absence, said that the details of the contract was a separate consideration from whether or not to hire the Messer firm. However, Councilman Johnson motioned to change the terms of the contract to three years. Councilwoman Myers said she didn't believe the mayor had the right to privatize a charter-created position like the city attorney. "If you can privatize the city attorney position, you could privatize the city administrator, the clerk, and every department head," she said.

The mayor's office has maintained that hiring a city attorney through a private contract is a cost-saving measure, because the city doesn't have to make insurance or retirement contributions. One of Mayor Hayward's campaign promises was that neither he nor any of his hires would receive city benefits. Similar private contracts have been created for the mayor's chief of staff John Asmar and spokesman Travis Peterson.

In a May interview with Progressive Pensacola's Derek Cosson (who himself was since hired by the mayor as a city employee with benefits), **Messer** said that he viewed the interim city attorney contract as a "public service," not a job, but that he "would certainly submit a proposal" if the mayor decided to privatize the office permanently. The Committee of the Whole voted 6-3 to hire **Messer**, with DeWeese, Myers and Pratt opposing. It will proceed for a final vote at Thursday's council meeting.

Employee bonuses

Council members Pratt, DeWeese and Myers also questioned whether Mayor Hayward had the authority to award \$750 bonuses to each of the city's 775 employees. As reported by the PNJ's

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Jamie Page, there is a possible conflict with section 215.425 of Florida statutes, which states that “[n]o extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered.” There was also a question of whether the mayor had authority to make such a large unbudgeted expenditure (around \$600,000) without council approval. Dr. Pratt said she felt the employees deserved the raise and had no intention of trying to reverse it, but asked if the council should ratify the action to make it legal. Councilwoman DeWeese said if the mayor’s action was found to be unauthorized, it would probably be covered by the city’s insurance, but suggested there could be legal repercussions for the mayor. She motioned to request an opinion from the attorney general about the legality of the bonuses.

The motion failed to get enough votes to proceed to a vote at Thursday’s meeting, but Councilwoman Myers said she had already sent a letter to the attorney general requesting an opinion. I have obtained her letter and reprinted it below.

Dear Attorney General Pam Bondi,

I am requesting an opinion from the Attorney General’s Office in my capacity as a duly elected public official. Specifically, I am a member of the Pensacola City Council representing District 2 within the incorporated area of the city. I am submitting two questions upon which I am requesting opinions from the Attorney General.

1. The Mayor of Pensacola recently announced that he is giving \$750.00 bonuses to 775 employees in recognition of their “hard work”. The bonus is not for future work and was not budgeted, or appropriated by the City Council. My question is simple: Do such bonuses violate Florida Statute 215.245, or any other Florida statute?

2. The City Council has before it an agenda item that calls for the approval, or disapproval of a recently negotiated union contract with the American Federation of State County and Municipal Employees (AFSCME). Attached is page 31 of the contract that calls for a one-time payment of \$750.00. Does such an agreement violate Florida Statute 215.245, or any other Florida law?

Sincerely,
Sherri Myers
City Council member, District 2 &c.

Much of the afternoon’s discussion was spent on two proposed ordinances recommended by the mayor’s office that seemed designed to stop both homeless individuals and the Occupy movement from sleeping on city property or using city restrooms beyond their intended purpose. Many attendees gave impassioned speeches opposing the ordinances, as did council members Myers and Jerrals. When council members asked **Jim Messer** about the constitutionality of the ordinances, he admitted that he had neither drafted nor reviewed the ordinances. Surprised by this, the council voted unanimously to table them both until they could be reviewed. I plan to write more about the recent city and county efforts to curb homelessness.

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Councilman Sam Hall, recently voted council president, is proving to be a strict parliamentarian. At several points in the meeting he cited Robert's rules and told speakers they were "out of order," even asking some to be removed. He also alluded to at least two previous interactions with citizens which he believed violated Florida law on cyberstalking, including an email sent to council members which, Hall believed, made an implicit threat against one council member's elderly mother. (For what it's worth, I was also copied on the email in question and did not interpret any threat.) He asked all citizens to tone down rhetoric and stick to rational arguments. Other issues considered by the Committee of the Whole included a \$5 million loan to convert the city's fleet to compressed natural gas vehicles and a request to sub-lease a portion of the Long Hollow Community Center to the non-profit Open Books.

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Inweekly.net
November 30, 2011

Therapy in Crazytown
Author: Jeremy Morrison

Attorney Doug Sale seemed almost relieved when the Pensacola Community Redevelopment Agency cut him loose. After listening to nearly two hours of discussions, he had apparently reached the same conclusion in regards to his future relationship with the CRA—"I just can't." "I don't want to sound like I'm taking my marbles and going home," Sale told the CRA board. "You have got some issues that must be resolved in this city before something much more serious than hiring a little ol' lawyer from Panama City comes before you." It was the attorney's first trip to town to visit with his clients. Weird as the meeting was, he seemed to think it worth the drive down Highway 98. "I couldn't resist it," Sale said as the November 28 meeting wrapped up. "It was too challenging professionally and intellectually." "Bail before the ship goes down," CRA board member John Jerralds laughed. Sale's visit to Pensacola was hardly a waste. It provided the CRA and city officials with a marathon group therapy session. What City Attorney **Jim Messer** had referred to as an "opportunity moment" before the meeting began.

Sale had come to the meeting to answer questions. But he also had a few questions of his own, such as who would be paying his bill? "You want your money back?" he asked. "I can give it to you. That's not the point." Sale was hired in June by CRA Chairman Megan Pratt and former CRA Administrator Becky Bray. The attorney has done a good bit of work for them—"clearly, less than \$20,000"—and a bulk of his tab has already been paid by the city. During its September 19 board meeting, the CRA, which is comprised of the entire city council, give a 60-day approval to an interlocal agreement for the city to run the CRA that had been proposed by Mayor Ashton Hayward. Board member Sherri Myers wanted more control on the CRA administrator and wanted Sale to offer an opinion on her thoughts at the next meeting. Others, including Pratt, expressed interest in exploring other modifications. None were voted on by the board, only the extension was approved.

Since that meeting, Bray and Pratt worked with Sale to draft an alternative interlocal agreement. The 'Administrator' morphed into an 'Executive,' with the new position reporting to the CRA chairman instead of the mayor. Then, the week before the Thanksgiving holiday, Hayward fired Bray and questions arose over the legitimacy of Sale's contract. Myers told Pratt that the CRA board members should have been involved in the discussions with Sale. "We should have had these conversations during this 60-day period and we wouldn't be sitting here now," Myers said, adding that the board shouldn't be expected to consider alternate language they had never seen before on a contract set to expire December 1—"I can't operate that way."

But these issues are symptoms to be viewed in a broader context. And so, the evening's discussions dove deeper, into a "tug of war" and a "playbook" and a "power struggle" and a "dead horse." At the crux of the matter is the CRA's relationship with the Mayor, specifically,

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who exactly should have control of staff. This particular dispute does not exist on an island. Similar struggles have played out in other council theaters since Pensacola changed to a strong-mayor form of government.

In the venue of the city council, Hayward has made it clear he intends to enjoy the newly minted strong-mayor position. But where the CRA is concerned, everyone is experiencing what Sale calls “growing pains” and **Messer** would probably refer to as a “sticky wicket.” “We don’t know what the rules are,” said board member P.C. Wu in frustration. “One side is saying it’s a touchdown. One side is saying it’s not a touchdown.” The CRA is a special taxing district within Pensacola. Its board is charged with developing a CRA plan that spends the tax revenues generated within its boundaries for the betterment of that area. While the agency is an independent entity, it does contract with the city to administer the CRA plan. Currently, some members feel the existing interlocal gives the Mayor too much power; Hayward is happy with the current agreement. “We don’t want this to have an appearance of a power-struggle of any sort,” Jerralds cautioned his fellow board members.

While this issue of a new interlocal agreement was going to take some time, most of the board seemed ready to retroactively ratify Sale’s contract—due to the fact that an actual vote was never taken on hiring the attorney—and get Pratt off the hook for any questionable procedure breakdowns and illegalities. “I’m trying to choose my words because I don’t want to jump all over the chair, who I have a tremendous amount of respect for,” said board member Sam Hall, who was recently elected as city council president. The general consensus among the board seemed to be that Pratt may have been a bit sloppy, but ultimately had the CRA’s best interest at heart. The board voted to approve Sale’s contract and pay him money owed. Pratt, Jerralds, Myers, Wu, Hall and Ronald Townsend voted to approve, while Vice Chairman Brian Spencer and Larry B. Johnson opposed the motion. Maren DeWeese was absent.

Pratt said that Bray had brought up the notion of hiring a separate attorney, and it seemed like a natural move in context of board discussions. “It seemed that there was a general consensus,” Pratt said. “I will not disagree here, we probably need to flesh out our processes and there is confusion here.” There may be a snag, however, to CRA’s retroactive move. **Messer** pointed out that he wasn’t sure the CRA had the authority to ratify the contract, but thought it might instead rest with the Mayor. “If the mayor pays it, then you apparently had the authority,” **Messer** said, adding that if Hayward opts not to pay Sale’s bill the matter will need to go before a judge.

Then there was the matter of drafting a new interlocal agreement, or not, and whether to keep Sale on the team. The CRA was less cohesive on these points. Wu suggested it might be good to keep a separate attorney. “He’s not wed to the Council’s position, he’s not wed to the Mayor’s position,” Wu said. Myers said she thought the current arrangement—extended two months ago—gave too much power to the mayor, specifically the ability to hire and fire staff that was charged with working with the CRA.

“I think the system is broken,” Myers said. “And I say that based on the firing of Thaddeus Cohen, on the firing of Becky Bray.” Hall also said the existing framework for the CRA didn’t

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seem to be working out under the new form of government. “I think we’re just asking for trouble,” he said. “I think it’s critical that we get that playbook worked out.” The new city council president said that he wanted to include Mayor Hayward in the process, thus respecting the intent of voters, but also thought it important to preserve the CRA’s individuality. “As the CRA board, I’m not willing to give that up to him,” Hall said. Sale told the board that he would work with both the CRA and the Mayor’s office to craft a new interlocal agreement everyone could work with. John Asmar, the Mayor’s chief of staff, said that they were up for conversations but that Hayward preferred the current agreement—“to be in the driver’s seat, to get it done.” “The alternative is that the CRA hires their own staff, rents their own building, do their own accounting,” Asmar said.

Myers made a motion to keep Sale on as legal advisor. Although several members had lobbied for such—notably Wu—that sentiment died on the floor for lack of a second.

Hall suggested that the group extend the agreement until the next board. Pratt asked if he meant the next “board meeting.” Hall said he had meant until a new CRA board took seats in 2013. “So, you’re asking to extend it for another year?” Pratt asked.

“Fourteen months, whatever it is,” Hall said. “I’m of the opinion, if it’s not broke don’t fix it. And it seems to be working for us.” Wu said they had a “very divided council.” Myers suggested there was an element of orchestration to the mess. Pratt argued for staying the course on drafting another interlocal. “This document isn’t about Mayor Hayward or us, it’s about the CRA,” the chairwoman said. “If we put it off until next year at this time, I think it will get brushed under the rug.”

Johnson said the issue was a “waste of time” and had him “spinning my wheels.” The CRA then voted on Hall’s motion—seconded by Wu—to extend the current arrangement until the next board formed. The chairwoman then said she had a question that had been on her mind since first taking office. “When can I quit?” Pratt laughed. She suggested that the board elect a new leader to coincide with the city council’s recent changing of the guard. Johnson asked if that meant she did not wish to be nominated for another round in the Chair. Pratt told him to ask her next month. Johnson threw Spencer’s name onto the table, but Pratt said the matter would need to be placed on the next meeting’s agenda. It was some rousing therapy, but some questioning does remain as to who’s paying the bill. “I would appreciate it if you pay me, don’t care if you don’t,” Sale told the room.

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Studer Community Institute
November 29, 2011

CRA power struggle ends in Mayor's favor

Author: Ann Regan

The Community Redevelopment Agency Board, which consists of all of the City Council members, on Monday voted 6-2 to cede all power to hire and fire the Community Redevelopment Agency staff to the Mayor of Pensacola despite the warning of the Board's attorney that giving away that power would mean that the CRA could not function. Douglas Sale, an attorney whom several CRA Board members described as an expert in CRA law, had accepted retention by the CRA Board to serve as its Special Counsel for the specific purpose of advising the Board on CRA matters — advice which 6 members of the Board ignored.

Before and at the meeting, Sale had explained to the Board that its sole purpose was to eliminate slums and blight in the CRA designated downtown area. To fulfill that sole purpose, the law required the CRA, not the City, to control the money funneled into the CRA Trust Fund from property taxes levied by the City and County. In other words, the CRA, not the City or Mayor, had a legal duty to control a huge checking account. A checking account that is being used, for example, to make payments for the work being done on the Community Maritime Park and to pay off the Park's debt service. The CRA also has completed a number of other projects in fulfilling its purpose including Seville Harbor, Downtown Palafox Street, and the Pensacola Cultural Center according to the CRA website.

The only way that the CRA can fulfill its obligations to administer all these CRA Plan projects and to control the use of Trust Fund dollars, is through a staff that's answerable solely to the CRA Board, Sale explained. Because the CRA has no staff answerable to the Board, Sale told the Board that “the CRA is not functional.” CRA Board members cannot talk to one another outside of Board meetings because of the Sunshine law, Sale explained. So, Boards like the CRA Board must be able to rely on staff to get done what the CRA Board has determined is necessary to fulfill its legal obligations.

Becky Bray, the CRA Administrator, who was fired by the Mayor, is an example of why the CRA is not functioning. The CRA Board had asked Bray to do some work with Sale regarding the hiring agreement with the City that the CRA Board determined needed to be done. Bray went about doing her work for the CRA without complaint from the CRA. But Bray is a City employee who is supervised by the Mayor and may be removed by the Mayor in accordance with the new City Charter. So the Mayor, as Bray's supervisor, could put a stop to Bray's work for the CRA by firing Bray — which he did several weeks ago.

Since the renewed staffing agreement calls for CRA work to be done by City employees supervised by the Mayor, just as Bray was, the Mayor has complete control over the work of the CRA. He can stop the work, he can change the work, or as he said recently, he can go “in a different direction” from what the CRA Board decides is necessary to fulfill its legal

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responsibilities. With the CRA staff answerable to the Mayor, the Mayor, for all intents and purposes, is administering the CRA Plan and controlling the CRA's Trust Fund. And the CRA is not functioning as the CRA was legally intended to function. Clearly, prior to signing the hiring agreement with the Mayor, the CRA had control over its projects and control over the Trust Fund—its "checking account." The problem is not that the CRA did not have a checkbook, as Councilman Larry Johnson suggested at the meeting; the problem is that the CRA Board gave away its checkbook to the Mayor.

The renewed agreement creates another issue for the CRA: who will be its attorney going forward? City Attorney **Jim Messer** had declared at the September 19 CRA meeting that he had a conflict of interest in representing both the CRA and the City. According to CRA Chair Megan Pratt's memo to the CRA Board, **Messer** suggested at the September 19 meeting that, because of his conflict of interest, instead of **Messer's** representing the CRA, it would appropriate for the Chair to retain Sale, which the Chair did. Sale, representing the CRA Board, had direction from **Messer** to negotiate the hiring agreement terms with the Mayor's office, according to Sale's email to John Asmar, Counsel and Chief of staff for the Mayor. However, Asmar was not much interested in negotiating with Sale as Asmar said that the Mayor did not recognize Sale as the CRA attorney because the Mayor had not authorized the CRA Board to hire Sale. Asmar emailed that the CRA was already represented "by legal counsel of the city," presumably meaning the "conflicted" **Messer**.

At the meeting on Monday, by a 6-2 vote, Councilmen Brian Spencer and Larry Johnson voting no, the Board agreed that Sale had been retained as the Board's attorney and should so serve at the meeting. Sale's acceptance of the Board's retention was for the limited purpose of explaining CRA law to the Board and suggesting amendments to the CRA agreement that would bring the agreement into workable compliance with that law, and for Monday's meeting Sale was the CRA Board's attorney.

At Monday's meeting **Messer**, the self-proclaimed "conflicted" attorney, and Sale sat at the CRA Board's table. During the meeting, despite **Messer's** conflict of interest, several CRA Board members, among them Councilman Spencer, repeatedly directed questions to **Messer** rather than to Sale. More interestingly, and despite Councilwoman Sherri Myers' reminding **Messer** that he had a conflict of interest, **Messer** answered the questions and offered advice to the Board. After listening to Councilman Spencer toss leading questions to **Messer**, for which **Messer** appeared to have written answers at the ready, Myers observed that she recognized "an orchestration" by the Mayor to influence the CRA Board when she saw one. Later, Spencer's wife, who had been seated in the audience, rose to her husband's defense and chastised Myers for seeing what she saw. But after Monday's meeting, since Sale is no longer the Board's attorney, the issue remains as to whom the CRA Board can turn for advice on legal issues.

While very few members of the public attended the meeting, two of them did speak during the public comment period. Mike Kilmer said the process reminded him of giving more authority to a "dictator." Rebecca Heyer expressed concern about the lack of transparency in the Mayor's firing Becky Bray.

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Studer Community Institute
November 25, 2011

As city charter turns two, questions remain

Author: Joe Vinson •

On November 24, 2009, City of Pensacola voters approved a new charter that reorganized municipal government under a "strong mayor." It's been an eventful two years, but many questions about the new government remain unanswered. In particular, the city council has become increasingly polarized regarding the mayor's agenda, with no detente in sight. Here are just a few of the more contentious issues.

Separation of powers

Since Mayor Hayward took office in January, there have been several times when council members have chafed under the constraints of the new charter, or rather, how the charter is being interpreted by the mayor's office. Case in point: when the mayor released his proposed budget, it restructured several departments with new cabinet-level positions overseeing them. The charter says the mayor may "appoint the head of each department, with the consent of the City Council by an affirmative vote of a majority of City Council Members." However, none of the new positions have been confirmed by council. The mayor's office contends these positions do not require confirmation because they are not department heads as defined by the charter.

Mayor's attendance at council meetings

When the charter passed, it was widely assumed that the new strong mayor would attend city council meetings. In his first months in office, however, Mayor Hayward made it known he didn't feel obligated to be there, attending only part of one meeting. The charter says that the mayor "shall have the following powers and duties," one of which is "to attend all meetings of the City Council with authority to participate in discussions, but without power to vote. Hayward interprets this wording as a power of the mayor, not a duty. He said via a statement that he would "participate in meetings when there is an issue that I need to speak to, or when there is a decision that we need to make jointly," but otherwise would send a staff member to represent him (usually City Administrator Bill Reynolds). Councilwoman Sherri Myers has repeatedly criticized this arrangement and has asked for an independent legal opinion.

At-large City Council seats

An early draft of the new charter removed the two at-large seats, which would have resulted in seven single-district council seats. For politically expeditious reasons it was changed back to a 9-person council before the charter went to voters, but there have been subsequent efforts to re-address the issue through a city referendum. Councilman Sam Hall has called for an end to the at-large seats, one of which he now occupies. As he told the News Journal in March, "My intent would not be to kick anyone out of their seat. ... I am asking that it go away at the end of my term [in 2012]." Of course, Hall was just elected president of the city council, which carries a

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two-year term. As council president, he may bring agenda items up for discussion. Will he use this authority to press for a referendum on the at-large seats, or has that train left the station?

CRA authority

Last week, Mayor Hayward fired Community Redevelopment Agency Administrator Becky Bray. The charter gives the mayor power to remove employees "with or without cause, and without the consent of City Council Members," but the CRA is a special case with authority organized under the city council. Through a temporary interlocal agreement, the city shares responsibility for personnel and other management, meaning Bray was considered a city employee subject to removal by the mayor. (Hayward had previously fired CRA director Thaddeus Cohen for undisclosed reasons.)

Hayward told the PNJ's Jamie Page that he could not discuss the reason for Bray's dismissal, except that he "want[ed] to go in a different direction with the person running the CRA." However, reporting by the Independent News and Rick Outzen suggests that the firing stemmed from the CRA's hiring an outside legal counsel to draft a new interlocal agreement that would put authority back in the hands of the CRA (i.e. the city council) — something Outzen characterizes as a "power grab." The council will convene as the CRA on Monday, the first time since Bray's firing and other issues came to light. That should be an interesting meeting.

Legal primacy

In the cases mentioned above, who can settle the legal issues at hand? In theory it should be the city attorney, **Jim Messer**. But **Messer** was hired by and works under the mayor, which presents a conflict of interest in questions of separation of powers. **Messer** has employed the services of the Tallahassee law firm Allen, Norton & Blue for some of these questions. He and the mayor's chief of staff John Asmar recently circulated a letter of opinion from that firm to city employees saying the mayor has power to circumvent the city's Civil Service Board in personnel matters:

Since the 2010 Charter was adopted by referendum pursuant to F.S. 166.031, to the extent that the Mayor's Charter authority conflicts with or affects the rights of municipal employees, the city's home rule legislative authority will supersede the special act's conflicting language. Accordingly, our opinion remains that the Mayor has "the power to appoint, discipline, and remove all officers and employees," as well as the power to take any and all other personnel actions previously administered or undertaken by the Civil Service System/Board, as stated in Section 4.01 of the Charter, regardless of any and all conflicting language and provisions of the civil service special act. **Messer** has said that there are inevitable "growing pains" for any new government, and that if it takes a judge to settle some of these questions, so be it. Based on frictions of the last few months, that seems inevitable too.

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Naples Daily News
January 12, 2005

County attorney nominee withdraws unexpectedly

Author: Charlie Whitehead

The man Lee County commissioners had tentatively selected to be the new county attorney shocked them all late Tuesday by withdrawing. **James Messer**, a Pensacola trial attorney, had his attorney fax his withdrawal letter shortly before commissioners were to discuss his proposed contract Tuesday evening. Commissioners had belabored the proposed deal and how the contract came before them during their morning meeting, and **Messer** apparently had heard enough. Chairman Doug St. Cerny had seemed poised to vote against the contract. St. Cerny was supposed to negotiate the contract as chairman, but said he'd been cut out of the loop. "The process you asked me to be involved in has been usurped," St. Cerny told board members. Instead, St. Cerny said, **Messer** worked with hired recruiter Bob Slavin and county Human Resources Director Dinah Lewis on the contract. A contract was scheduled for last week's agenda, St. Cerny said, before he ever saw it. He said he never heard from **Messer** or Slavin until he got a letter just before the meeting that had been sent to Commissioner John Albion last week. "Obviously there's more at play here maybe than what I'm privy to," he said.

St. Cerny said he had concerns once he saw the contract, which called for a \$187,500 salary and two three-year terms. Former County Attorney Jim Yaeger made a little more than \$150,000 annually. St. Cerny said the compensation package, which also included deferred payments, a severance deal he called generous and the payment of license fees in Florida and elsewhere, was too lucrative. "I thought for not having been a county attorney or a deputy county attorney, the package he was requesting was excessive," he said.

Though Commissioner Bob Janes had moved approval of the contract, and Commissioner Tammy Hall seconded, they agreed to wait when St. Cerny explained his objections. "I made the motion because I felt we were further along," Janes said. "To find out you were not in the loop disturbs me greatly." Hall said, even before **Messer's** withdrawal, that the situation was embarrassing to the board. "We look like Keystone Kops," she said. "We're sitting here embarrassing potentially ourselves and our new county attorney." Albion, who'd argued ardently for **Messer**, said the reason he got the letter from Slavin was that he'd asked for Slavin's opinion on the proposed contract. "I thought it was sent around" to other commissioners, he said. Lewis and Assistant County Attorney Andrea Fraser said they'd both reviewed the contract and that it had been modified at their requests. "Great," Hall said. "Wonderful. But where was Doug?"

Commissioners might have approved **Messer's** contract Tuesday evening. It appeared Janes, Hall and Albion were ready to approve the deal, but they never got the chance before **Messer's** withdrawal letter arrived. The turn of events moves the county back to square one seven months after longtime legal boss Yaeger retired. Still waiting in the wings are Deputy County Attorney Bob Gray and Chief Assistant County Attorney David Owen, both of whom were considered and received support when **Messer** was chosen after a rancorous series of 3-2 votes.

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Albion tried to get commissioners to approve **Messer's** contract anyway Tuesday night, hoping apparently to change his mind. He then tried to have Owen appointed as interim county attorney -- **Messer's** terse withdrawal letter included an endorsement of Owen for the job -- but Owen himself asked him to reconsider. "Since we've come back from the holidays, we've put in a tough seven days," Owen said. "It's been a particularly tough day today. I think we all should take a deep breath, and I'd respectfully request the board take no action today." Commissioners will discuss the county attorney job again next Tuesday.

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Naples Daily News
December 15, 2004

Lee hires Pensacola lawyer as county attorney

Author: Charlie Whitehead

It took four 3-2 votes to get it done, but Lee County commissioners selected a Pensacola trial lawyer as the county attorney Tuesday after passing over two in-house candidates. **James Messer** was the chief litigator for Escambia County government from 1993-2001, and had stints with the U.S. Justice Department and as judge advocate attorney for the U.S. Marine Corps before that. "I'm flattered and honored to hear that," said **Messer**, who was in his Pensacola office while commissioners were arguing over his hiring. "I think Lee County is a wonderful place to live and you have an excellent board of county commissioners." **Messer** said he hadn't been contacted yet about the vote, so he can't discuss the probability of an agreement on terms such as his salary. He also declined comment for now on the 3-2 votes. Commission Chairman Doug St. Cerny will do the contract negotiating on behalf of commissioners.

Commissioner John Albion successfully argued for **Messer**, but his first motion to select him failed 3-2 with St. Cerny and Commissioners Ray Judah and Bob Janes voting 'no.' Judah argued for David Owen, the chief assistant attorney in the office now, while St. Cerny supported Bob Gray, who was deputy county attorney to Jim Yaeger until Yaeger retired this summer after 26 years as county attorney. Judah then made a motion to hire Owen. That motion failed 3-2, with St. Cerny, Albion and new Commissioner Tammy Hall voting 'no.' The convoluted route then had Janes making a motion to exclude Gray and Owen from consideration. That motion passed 3-2 with Judah and St. Cerny objecting. Janes' subsequent motion to select **Messer** passed by the same 3-2 vote.

Albion cited **Messer's** military background and high ethical standards, comparing him to utilities director Rick Diaz, who was hired on the strength of glowing recommendations, and County Manager Don Stilwell. Stilwell was brought to Lee County 11 years ago by the same headhunter that found **Messer**. Albion argued then for Stilwell, while other commissioners argued for other candidates. Tuesday's debate was similar. "I lean toward staying similar to the county manager's style," Albion said. Judah, however, questioned **Messer's** land-use and growth management experience. "Escambia does not have a good reputation for growth management," he said. "I was taken aback that he had absolutely no background whatever."

Both Janes and Hall said they came into Tuesday's meeting wanting to hear the debate, and both ended up voting with Albion. St. Cerny and Judah warned that commissioners could break up a winning team by bypassing the two in-house candidates. "Jim Yaeger had Bob (Gray) in the position he was in for a reason," St. Cerny said. "It's awful hard to tamper with a winning combination." "We have a heck of a team in place," Judah said. "If we bring somebody in from outside, there's going to be damage to that team. It's going to splinter and break apart." Both Gray and Owen had praise for **Messer**. "Everybody likes him, and I look forward to working for him," Gray said. "You pick your lawyer like you pick your doctor," Owen said. "It all depends

Internet Research
MESSER, JAMES "JIM"

Articles are in reverse chronological order

on what you're looking for. You have to be comfortable with your lawyer, and the majority of the board had a comfort level with **Mr. Messer.**" As for breaking up the team, Gray said there are other opportunities and he has feelers out. Owen declined comment.

Internet Research
MESSER, JAMES "JIM"

Articles are in reverse chronological order

The Miami Herald
August 11, 1995

Scales of Justice Tip Toward Worker

Author: Associated Press

A 454-pound heavy equipment operator, who was fired for being too heavy, has won a lawsuit to get his job back. A judge also ordered Escambia County to pay David Nickson, who stands six-foot-one, \$163,000 in back wages for the past four years in the verdict that lawyers received Wednesday. "We dropped the ball" by firing Nickson before assessing his ability to operate bulldozers and other heavy equipment, **Jim Messer**, an attorney for the county, said Thursday.

Research Compiled by: Tammie Gardner
Colin Baenziger & Associates

City Commission Special Meeting, 1:30 pm

Meeting Date: 03/10/2016

Re:

Information

SUBJECT:

Iola T. Mosley

Attachments

Mosley

Form Review

Form Started By: Linda Cox

Final Approval Date: 03/08/2016

Started On: 03/08/2016 11:51 AM

Section 3

Iola T. Mosley

*Fort Pierce City Attorney
Candidate Report*

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Cover Letter

Jola T. Mosley, Esq., 4334 Lake Lucerne Circle West Palm Beach, Florida 33409

I introduce myself to you in the form of this cover letter. I have had an interest in Justice and in making certain that results of all matters in which I may be involved on behalf of my client conclude in a way that aligns with both the Constitution and the laws of our State and Country. I am an experienced litigator and will always seek to zealously advocate on my client's behalf. However, because of my experience, I also understand that it is important to find ways to keep my client informed about the law so that needless litigation might be avoided.

In my 28 years of practice I have worked as trial counsel on behalf of criminally accused persons for 13 of those years. In the latter part of my defense trial practice, I tried a number of jury trials in which the State was seeking the death penalty. In those cases, I sought to not only make certain that I was zealous in advocating for my client in the trial phase but also in the penalty phase of the trial. I saw my role as the attorney representing the individual is to ensure that the law was followed and to protect my client's rights. If there was a violation of my client's rights under the law or constitution my job was to protect those rights under the Federal Constitution or other applicable law or regulation. As a criminal defense attorney I estimate that I tried over 100 cases to verdict.

As a State Prosecutor it was my job to make certain that I had sufficient facts upon which to file a case and that the appropriate charge was filed. I had an obligation to make certain that the law was followed and all the rights of those whom I prosecuted were complied with. I had a responsibility to my victim and to society as a whole to ensure that any criminal act was addressed with the appropriate sanction. I wanted to restore the confidence of my victim and of society in the protection that is afforded within our great Nation. As a criminal Prosecutor I estimate that I tried at a minimum 50 trials.

In my current position with the School District it is my job to ensure that the needs of our student and employment personnel are met, and that my client is compliant with the laws and regulations governing the public entities, including laws relating to Florida's open government laws, and those relating to public records. I am also responsible for providing training and workshops to assist my client in understanding the complexities of the legal system as it applies to the needs of the public, including both the children we educate, and those persons who serve them through the school system. In this way, I feel my client is able avoid mistakes which might otherwise lead to litigation because the client is informed. I have litigated both administrative hearings as well as 2 civil jury

Iola T. Moxley, Esq., 4334 Lake Lucerne Circle West Palm Beach, Florida 33409

trials to verdict in my tenure with the Office of the General Counsel for the School Board of Palm Beach County. I have conducted many workshops and presentations to the Board and to personnel and I have made myself available to the client constituency to answer any questions that arise. In keeping my client and client constituency informed there is less likelihood of error that will lead to added costs and unnecessary litigation. I believe the needs of my client are my pleasure to preserve and it is my obligation to ensure that my client is well equipped to meet the needs of the public and that my Board acts in compliance with the laws of the State and of the United States.

Lastly, I have dedicated part of my life to public service through various organizations of which I am a part as well. One of those organization is dedicated to raising awareness within the African American community about the ravages of Cancer, and helping to raise funds on behalf of the Howard University Cancer Center, toward the eradication of Cancer. I am also affiliated with one of the Nations most distinguished Sororities, working to increase economic development, educational development, international awareness and involvement, physical and mental health and, political awareness and involvement. I have served as officers in both organizations.

If I am selected for this position I will bring my reverence for the law, the passion, creativity, professionalism and dedication that I have always displayed in every endeavor.

Section 3

Resume

*Iola Thomas Mosley, Esq.
4334 Luke Lucerne Circle
West Palm Beach, Florida 33409
(561) 909-9370
Admitted to the Florida Bar 1987
Admitted to Federal Bar Southern District of Florida 2006*

EDUCATION

*Howard University School of Law Washington D.C. Juris Doctor 1986
Howard University Washington D.C. Bachelor of Arts 1983 (Philosophy)*

EXPERIENCE

School District of Palm Beach County, Florida
March 2005 to present

Senior Counsel/Policy and Regulatory Compliance/Academic Compliance

Represents and advises the School Board of Palm Beach County in a variety of matters including Litigation involving State, Federal, State and Administrative matters, Matters effecting Government In the Sunshine; Negotiation of Charter School and limited vendor contracts, as well as Interagency Memorandum. Additional duties include; review and advise as needed updates to existing Board Policies to ensure compliance with State and Federal law. I have advised and litigated cases involving, Student Discipline; The Individuals with Disabilities Education Act (IDEA), ADA related Claims, Student Records and Privacy Issues under Family Education Rights Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPAA). I advise and train staff regarding Family related and Juvenile Dependency/Delinquency matters affecting student performance and attendance, and conduct continuing staff training in matters relating to student issues, Charter School issues (including some limited employment matters).

Office of the State Attorney for the 15th Judicial Circuit
September 2002- February 2005

Juvenile Division

Represented the State of Florida in criminal prosecutions of juvenile delinquency cases; including both felony and misdemeanor matters

County Court Division

In Misdemeanor prosecutions including DUI; Drug Possession; Prostitution; Theft and Simple Battery and Domestic Battery prosecutions and a variety of other misdemeanor crimes

City of West Palm Beach

July 2000-July 2001

Duties include Civil Trial Personal Injury Defense; Code Enforcement; Municipal Ordinance Violation Prosecution; Civil Forfeiture; Nuisance Abatement; Vehicle Impoundment/Forfeiture and Municipal Lien Foreclosure Litigation

Law Offices of Whitfield & Mosley

October 1996-July 2000

Partner General Practice firm Family; Criminal Defense; Capital Crimes (Death Penalty Qualified)

Public Defender 15th Judicial Circuit

Assistant Public Defender January 1987 to October 1996

Training Coordinator March 1995 to October 1996

Designed and implemented training and recruitment for incoming new Assistant Public Defenders as well as provided continuing training for staff of approximately 90 attorneys

Capital Crimes Division March 1994 to March 1996

Represented indigent individuals in Capital death penalty cases in all stages of litigation

Felony Trial Division July 1989 to March 1994

Represented indigent persons accused of felony offenses through all stages of litigation

County Court Division Supervising Attorney South Satellite Office June 1987 to July 1989

Represented indigent persons accused of misdemeanor offenses in all stages of litigation

AFFILIATIONS

Member Palm Beach County Bar Association

Florida School Board Attorneys Association

Malcolm Cunningham Bar Association

Delta Sigma Theta Sorority Inc.

The Charmettes, Incorporated

Delta Theta Phi Law Fraternity

New Bethel Missionary Baptist Church Trustee/Counselor

NAACP

Section 3

Candidate Introduction

Iola Thomas Mosley

EDUCATION

Juris Doctorate 1986 Howard University School of Law, Washington D.C.
Bachelor of Arts, Philosophy, 1983, Howard University

EXPERIENCE

2005 to Present Senior Counsel Regulatory Compliance/Litigation – School District Palm Beach County, Florida

2002-2005 Prosecutor Office of the State Attorney for the 15th Judicial Circuit Palm Beach County, Florida

2000-2001 Assistant City Attorney City of West Palm Beach, Florida

1996- 2000 Sr. Partner Whitfield Mosley

1987-1996 Assistant Public Defender Office of the Public Defender 15th Judicial Circuit Palm Beach County Florida

BACKGROUND

The Palm Beach County School District is the 11th largest School district in the Nation and the third largest in the State of Florida. It is headed by a seven-member School Board, and an appointed Superintendent. It is comprised of 173,543 student shareholders, and employs over 20,810 people. The District has 40 High Schools 33 Middle Schools, and 130 Elementary Schools, and has a current operating budget of 2.3 billion dollars. Palm Beach County itself is comprised of 1,265,293 people and the average income is \$53,500.

I am currently employed in the Office of General Counsel in the district which is comprised of 13 attorneys including the General Counsel. The department is divided into separate practice groups, including: Administrative Law/Regulatory Compliance, Litigation Risk/Labor and Employment, Academics, Real Estate, and Transaction/ Procurement. Each practice group is comprised of 2-5 attorneys, two paralegals, and a secretary. My current practice groups are Litigation Risk / Labor and Employment and Administrative/Regulatory Compliance. I have also worked in Academic, and have worked in the past with Transaction/Contracts. I continue to provide assistance and support in ongoing trial cases including trial preparation and trial strategy.

I directly supervise two paralegals and one secretary. I have day to day supervision and training opportunities with senior level district personnel and school principals. Our current caseload includes cases involving transactional employee and tort related claims. This includes cases

Iola Thomas Mosley

concerning negligence and breach of duty, violation of civil rights, ADA claims (including both student and employee shareholders), violation of the Individuals with Disabilities Education Act (IDEA), breach of contract and other contract disputes, wrongful termination-disparate employee discipline, copyright infringement, construction, and eminent domain cases. Currently there are 121 open cases and 11 are currently being handled by outside counsel.

The most significant issues we are currently facing in The Palm Beach County School District include:

- **Balancing the duty to the Client/Board with the duty to the public.** Developing protocols to ensure clarity with respect to the specific duties and rules that legitimize school board members in order to curb their desire to aid ‘pet’ constituents.
- **Crime in the schools.** There has been a recent increase in violent incidents in our public schools and at the same time instances of use of excessive force police affecting most cities. We are in the process of redrafting our use of force protocols as design training modules designed to reduce violence, and counsel students to better cope with violence within the community. We are also working in collaboration with other school police as well as community police departments to address violence and excessive force issues.
- **Increasing graduation rates in underserved immigrant populations.** The district is in the process of developing protocols in accordance with existing Federal Law regarding education rights of immigrant population.
- **Maintaining compliance with current federal and state regulations.** We are working on protocols to comply with federal and state law while making certain that qualified students are receiving services. The protocols will serve all student populations, regardless of need, orientation, religion, immigration status, and physical/intellectual ability.
- **Facility needs.** We are working in collaboration with Palm Beach County Commissioners to develop legally permissible means to increase funds for cultural education and opportunities for cultural education for the student shareholders in our district. Working in union with the commission to address issues of growth is key. Presently, we are considering joining the County Government in a referendum for a proposed half cent sales tax to cover increased costs.
- **Open government Sunshine Law.** Currently one of the most pressing issue we face is whether employees who use personal digital communication devices may be compelled to produce communications contained on the devices under the “Sunshine Law.” And then determining how much of that information the public is entitled to should the employee be compelled to submit said device for inquiry. We are currently in the process of drafting protocols regarding the use of technology by elected officials, directors, administrators, and other staff. The issue is how to achieve access without invading an employee’s privacy rights.

Iola Thomas Mosley

GENERAL, MANAGEMENT STYLE AND EXPERIENCE

I am a lifelong Florida resident. I have ‘come of age’ both emotionally and professionally here in South Florida. I returned ‘home’ after law school because I cared about the community that raised me and I wanted to be a part of preserving the way it used to be.

I am a person who believes that as a public servant/ legal professional it is my role to assist my client, and to serve the public in the most efficient way. With that said, the experiences that I have gained in my current position in defending and advising the School District of Palm Beach County in areas of Contract negotiation, Litigation, Administrative Law and Regulatory Compliance, is consistent with the role of a City Attorney, and would serve well toward accomplishing that goal.

In the past 11 years, I have worked with the Palm Beach County School District through many transitions. We have had 5 changes in General Counsels, and each had his/her particular management style. We have had four Superintendents of Schools, and with the exception of one member, we have had a complete turnover in our school board. Through all of this I have been required to ‘wear many hats’ and to assist with transitioning and merging the existing/remaining attorneys with a new team of attorneys, and in hiring new staff.

I believe that management success will come via the careful assessment of the strengths of each current member of the legal staff, and, from there, maximizing the potential of staff as a united ‘team.’ I believe that the most important attributes of a City Attorney are the ability to evaluate the strengths of his working group, and then to determine how they best work to serve the needs of the city. High morale and a clear vision is a must. Listening to both the client and the staff are of the utmost importance. Organization is also a key attribute and the ability to see the “big picture” or, considering the long-lasting import of legal advice that we give is vital. The legal office should be proactive and prepared.

A City Attorney does not need to be an expert in every area of law; however, the City Attorney must have the ability to lead and motivate the attorneys and staff to be life long legal learners. The City Attorney must be candid with the client and keep the City apprised of the status of all litigation and of potential litigation. Additionally, the City Attorney must inspire and develop the leadership potential of the attorneys and staff, and be ultimately responsible for producing superior work product for the client.

There are some key management practices that I hold in high regard. I believe in the principal of transparency as it applies to our responsibilities to the City Commission and Mayor. When new cases are filed, an advisory must be sent out immediately to the Client. I then endeavor to learn everything about the facts of any new case that is filed case both strengths and weaknesses interview staff that has information and who might be potential witnesses. I would, along with staff, complete a cost analysis to determine the best strategy to dispose of the case. I would also determine whether the case should remain in house or whether an outside firm should be recommended for retention.

Iola Thomas Mosley

Once the initial review process is complete an advisory report will be forwarded to the City Commission. In-house litigation staff will be assigned to the matter to litigate it or to manage the litigation handled by outside counsel. It is important that the Council is kept apprised regarding the status of the case and to accomplish this I would submit weekly or bi-weekly status updates to the Council members individually.

My management style is one of inspired leadership. There are generally two types of leaders: those who lead by example and who motivate staff members to reach their highest potential, and those who lead by threat and blame passing. A detached leadership style strips away at the trust that should be the glue that keeps the staff united.

It is important to listen to the concerns and ideas of staff to in order to foster a collaborative working environment. That environment also includes other shareholders. I would also schedule meetings with each individual City Commissioner to understand his/her expectations of the Office and of the attorneys. Because we are effected by counties/cities to the South and North along the Coast, I would also meet with other city, county, attorneys and foster communications with other public officers in an effort to form collaborative training and information exchange between our corresponding municipal and county and state governments.

The elected officials with whom I interact would say that I am a consummate professional and well versed in the law. I am honest and straightforward, and easy to approach, and thoughtful. They would inform you that I am polite, and spiritual.

My strengths include a broad knowledge of the law. I learn concepts and grasp issues quickly. I am thorough in completing research, and receptive to diverse points of view. I am patient and personable and I use my efforts to make certain that my client is both protected and informed.

Although I have many strengths, I will sometimes become anxious about making certain that I have not overlooked anything in my advice or preparation.

Despite the fact that there has been a great deal of transition in both the Office of General Counsel as well as within the overall District, I have mastered the challenges of learning new areas of law and I have provided excellent representation to my Client. I feel that I have achieved my greatest success in thus rising to this challenge.

My biggest failure in my career was failing to adequately plan a case I had set for trial. When I was a young attorney, I depended on my public speaking ability and on my ability to be likeable, and straight-forward. I did not understand the need to prepare thoroughly or anticipate and answer potential weaknesses in my case. I was embarrassed and disheartened because I realized that I did a great disservice to my client by not being prepared. What I learned from that was that I must always plan for contingencies in every matter that I undertake. I learned to think proactively, rather than reactively. I learned that in your preparation you must have a plan B, which I learned is the test of true character. I learned that my client was the most important part

Iola Thomas Mosley

of any matter that I undertake. Fortunately, the final outcome was positive for the client but the initial shock of potential disaster made me understand how important it is to be prepared.

I have not had to fire an employee or recommend that an employee be terminated. However, I did have a direct report staff member who was not completing work and seemed to have some issue with following direction from one of the attorneys in the office. I called the employee into my office and told her that many of the projects she completed were done well, but that there were some issues with others and I explained to her some of the examples that were shared with me. I then inquired if there were any particular issues that were causing the delay with the other attorney, and inquired if there was any way I could assist her. I learned that she felt that the attorney was being particularly condescending and that she felt she couldn't trust her. I spoke to the attorney who agreed to sit down with the secretary and we were able to resolve the conflict without any further incidents and they worked well from that point on.

In the first 6 months of my tenure as City Attorney:

- I would begin by scheduling meetings with the current interim City Attorney and staff to learn about all issues facing the city, current cases, the needs of the office and how the office is structured. I would also like to receive suggestions on how we can improve within the current structure and on internal changes that they believe would increase efficiency.
- I would study the legal department's budget and managing its finances is key to the job.
- I would learn the City's codes and departments responsible for implementation. I would also meet with each Commissioner to learn what the current goals are for the City Attorney and the direction that they would like to take in accomplishing them.
- I will also meet with departments directors and managers to learn the function of the various offices and how we can best support their offices in service to the City.
- I would like to meet with some of the constituents in a listening tour to get the feel of the City and also eventually like to reach out to county and municipal counterparts to share common issues and to learn how we can best support each other in service to our respective agencies.

I have worked with the media in the past and I have generally been gracious, but I also try to prevent needless hemorrhaging of information that is not necessary. In my current agency, we have an office of communications with whom we work closely and as attorneys we try to structure the release of information so that the public is informed but also so that we do not expose any legally impermissible information.

In my leisure time, I sing in my Church Choir, and work with the youth in my Church, I participate in civic organizations, I read, I spend time with my family, and I occasionally travel. I am not aware of anything in my background that would embarrass The City and there is no "dirt" that anyone could tell about me.

Iola Thomas Mosley

REASON FOR WANTING TO LEAVE CURRENT OR MOST RECENT JOB?

Although my job offers opportunities to proactively solve problems of my district, I would like to explore new ways in which to serve the Public interest. My current job offers very limited opportunity to work in areas of expertise that I have developed over the 29 plus years of my law practice. I welcome the opportunity to use the full spectrum of my expertise to the citizens of the City of Fort Pierce.

SIX ADJECTIVES OR PHRASES I WOULD USE TO DESCRIBE MYSELF

Adaptable	Motivating
Dedicated	Proactive
Ethical	Skilled

CURRENT / MOST RECENT SALARY

My current annual salary is \$116,071.

Section 3

CB&A Background Checks

**Background Check Summary for
IOLA THOMAS MOSLEY**

Criminal Records Checks:

Nationwide Criminal Records Search	No Record Found
County Palm Beach County, FL	No Record Found
Federal Florida Alabama	No Record Found Records maintained by county of Residence - See above

Civil Records Checks:

County Palm Beach County, FL Jefferson County, AL	No Record Found No Record Found
Federal Florida	No Record Found

Motor Vehicle

Florida	No Record Found
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Credit

Mediocre

Bankruptcy

No Record Found

Education

Confirmed

Employment

Confirmed

Bar Certification/License

Member in Good Standing
Bar #710768

**Background Check Summary for
IOLA THOMAS MOSLEY**

THE FLORIDA BAR



ABOUT THE BAR NEWS & EVENTS FOR THE PUBLIC MEMBER SERVICES **LOG IN** **FIND A LAWYER**

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Iola T Mosley

Eligible to Practice Law in Florida

Member in Good Standing	
Bar Number:	710768
Mail Address:	Palm Beach County School District 3318 Forest Hill Blvd # C-323 West Palm Beach, FL 33406-5813 United States Office: 561-969-5846 Fax: 561-434-8105
Email:	iola.mosley@palmbeachschools.org
Personal Bar URL:	www.floridabar.org/mybarprofile/710768
vCard:	 ?
County:	Palm Beach
Circuit:	15
Admitted:	10/06/1987
10-Year Discipline History:	None
Law School:	Howard University School of Law, 1986
Sections:	Administrative Law
Federal Courts:	U.S. District Court, Southern District of Florida
Firm Size:	6 to 10
Firm Position:	Government attorney

The Find a Lawyer directory is provided as a public service. The Florida Bar maintains limited basic information about attorneys licensed to practice in the state (e.g., name, address, year of birth, gender, law schools attended, admission year). However, through this directory The Florida Bar allows individual attorneys the opportunity to provide for public information certain expanded personal and professional data. It is the attorney's responsibility to routinely review and update those expanded listings. The information contained in those expanded listings is presented by the Bar "as is" with no warranty of any kind, express or implied. The Florida Bar, its Board of Governors, employees, and agents thereof are not responsible for the accuracy of that additional data. Publication of attorneys' contact information within this listing should not be construed as their consent to receive unsolicited communications in any form. Certain unauthorized uses of this data may result in civil or criminal penalties. The Find a Lawyer directory is not a lawyer referral service.



**Background Check Summary for
IOLA THOMAS MOSLEY
Personal Disclosure**

Personal Disclosure Questionnaire

Name of Applicant: Jola T. Mosley

The following questions are designed so that we will be able to make full disclosure to our client concerning your background. Please answer them honestly. Cutting corners or misrepresenting your past will result in you being eliminated from all further searches conducted by this firm. We understand that frivolous charges are sometimes made and that charges do not mean you were guilty. We also understand that you may have been wronged and needed to seek compensation. The bottom line is that we want to be certain that our client is fully informed. If you have any questions, please contact us for clarification.

Please explain any yes answers on a separate sheet of paper.

1. Have you ever been charged or convicted of a felony?
Yes No
2. Have you ever been accused of or have been involved in a domestic violence or abuse incident?
Yes No
3. Have you ever declared bankruptcy or been an owner in a business that did so?
Yes No
4. Have you ever been the subject of a civil rights violation complaint that was investigated or resulted in a lawsuit?
Yes No
5. Have you ever been the subject of a sexual harassment complaint that was investigated or resulted in a lawsuit?
Yes No
6. Have you ever been convicted of driving while intoxicated?
Yes No
7. Have you ever sued a current or former employer?
Yes No
8. Do you have a personal My Space, Face Book or other type of Web Page?
Yes No
9. Do you have a personal Twitter Account?
Yes No
10. Is there anything else in your background that, if made public, would cause you, our client or our firm embarrassment if it came to light through the press or any other mechanism?
Yes No
11. Please provide a list of any lawsuits in which you are or have been a party either as plaintiff or defendant.

Attested to: 
Signature of Applicant

Please email this form via PDF DOCUMENT to Kknutson@cb-asso.com or via fax to (888) 539-6531 no later than 5:00 PM CST 02-08-2016.
(Note: Please be sure to sign the form with your actual signature if you are sending Fax or PDF Document)

**Background Check Summary for
IOLA THOMAS MOSLEY
Personal Disclosure Explanation**

ATTACHMENT TO PERSONAL DISCLOSURE QUESTIONNAIRE

Question 3; My husband and I filed for Protection in the Bankruptcy in order to save our home in 1997. We paid into the plan for ten months and the subject debt was resolved and the bankruptcy dismissed.

Questions 8-9; I have the following personal social media accounts;

Facebook

LinkedIn

Pintrest

Twitter

Question 11;

Chase Mortgage v Emmett and Iola Mosley. Case Dismissed with Prejudice 1997

Nationstar Mortgage v Emmett and Iola Mosley. Foreclosure 2014

CB&A Reference Notes

Reference Notes
Iola Mosley

Ike Robinson – Former Commissioner, West Palm Beach, FL 561-686-7530 561-310-2090

Because Ms. Mosley is from West Palm Beach, Mr. Robinson knows her family and watched her grow up. She comes from a great family. Mr. Robinson spent 16 years working for the City of West Palm Beach. He was on the City Commission while Ms. Mosley was the Assistant City Attorney. The City has a strong mayor form of government which means the Mayor is responsible for hiring employees. Mr. Robinson was disappointed that the Mayor did not select Ms. Mosley as the City Attorney when the position came open during her tenure.

Ms. Mosley's capabilities as an attorney are excellent. She is thoroughly aware of municipal laws in the state of Florida, both at a state and city level. She is readily available to assist the elected officials. Her recommendations are very helpful and she is very responsive.

Every assignment Ms. Mosley was given was completed in a timely manner even if she had to put in extra hours to meet the deadline. Ms. Mosley is very capable and gives recommendations that everyone can live with.

One of Ms. Mosley's strengths is negotiation. Many lawsuits were filed against the City but when she was part of the negotiation team, the City had a chance for success. All of the attorneys did well, but the other parties knew Ms. Mosley would be fair with them, which helped negotiations proceed.

Ms. Mosley tries to find the best solution, and then also creates a plan B and a plan C so that the elected officials have multiple options to choose from. She had many connections in the community which was an asset. She worked very well with everyone.

Ms. Mosley has experience in constitutional law from both a city and school district perspective. She was the legal expert for contracts and resolutions. She has experience in environmental law, land use, utilities and labor/personnel matters. She was involved in many areas because the staff was much smaller during her tenure. She came to West Palm Beach with a vast knowledge and continued to learn and grow.

When Ms. Mosley was asked about a situation she gave the best legal explanation possible. She was one of the few attorneys that gave the real 411 when something went wrong. Her recommendations can always be trusted.

In the legal realm credibility, ethics, and morality is critical. Ms. Mosley is professional and lives by those standards. She was hired by the school district in Palm Beach County which has one of the toughest background investigations in the state.

Ms. Mosley would be an excellent City or County Attorney and a credit to any employer if given the opportunity.

Reference Notes
Iola Mosley

Words or phrases used to describe Iola Mosley:

- Knowledgeable,
- Credible,
- Trustworthy,
- Honest,
- Worker bee, and
- Someone you want to have your back in a battle.

Strengths: Knowledgeable, honest, eager to learn, stays abreast of what is happening as it pertains to the state.

Weaknesses: The organization was short staffed. Ms. Mosley had numerous responsibilities and noticed other items that needed to be corrected. She spent many hours at City Hall to get everything done. Over time she has learned that she cannot do it all and needs to delegate. Also, some Commissioners felt that she was young and did not have enough experience, but Mr. Robinson did not agree.

**Steven Lake – Former Senior Attorney, Palm Beach County School District, FL
352-867-2176**

Mr. Lake and Ms. Mosley worked together from 2007 to 2012. Mr. Lake was the Senior Attorney for Academics and Ms. Mosley reported directly to him. They did a great deal of special education legal work including due process hearings, school based team meetings, advanced placement meetings, eligibility meetings, and all the legal research associated with them. The other 10% of their job was a smattering of other items related to legal issues in public schools like discipline issues. She is a great attorney.

Ms. Mosley was responsive and timely in her responses. Her assignments were always completed by the deadline. The recommendations she gave Mr. Lake were well received and well put together. They attended weekly staff meetings for the attorneys and general counsel, she did a great job analyzing each case and making recommendations on how to handle them. Her performance was always good.

When dealing with the law Ms. Mosley understood the value of good legal research before venturing an opinion on any subject. She was involved in negotiations for attendance and mediation meetings. She also attended due process hearings with administrative law judges. Determining and implementing strategy is one of her strengths. She has really good people skills and can bring conflicting parties to a resolution.

Reference Notes
Iola Mosley

Ms. Mosley is solution oriented but started out in more of a junior role. Over time she grew and began to think more strategically. She did not sit back and say something could not be done, she provided an analysis with pros and cons which was very useful.

The areas of law that Ms. Mosley has experience in, but not limited to, are: constitutional law, contracts, special education, disability issues, and general education. She always kept others informed on what she was working on. She has very good interpersonal skills. She worked well with the paralegal and the other employees in the organization.

The school district had tough cases involving parents and their attorneys but none of them escalated to the level of controversy. Nothing in Ms. Mosley's background would embarrass an employer should the press dig into her background. Mr. Lake does not believe anyone would disagree with the statements in this reference.

Mr. Lake would hire Ms. Mosley. She is resourceful and motivated to succeed. She is a veteran lawyer with much experience. She is a wonderful person to work with and would be an asset to any organization.

Words or phrases used to describe Iola Mosley:

- Insightful,
- Dedicated,
- Caring,
- Knowledgeable,
- Resourceful, and
- Good person.

Strengths: Really good at issue spotting, excellent people skills, manages conflict well.

Weaknesses: None identified.

Vickie Evans-Pare – Labor Relations Attorney, Palm Beach County School District, FL
561-434-8479

Ms. Evans-Pare has known Ms. Mosley since 2005.

An attorney left the organization and the case he was working on was assigned to Ms. Evans-Pare, Ms. Mosley and a third attorney. Ms. Evans-Pare knew employment law but had never tried a case. Ms. Mosley knew the players but had no experience with employment law. The third attorney had experience trying a case but did not know the players. The case was scheduled with a federal judge the very next month. They had at least 100 banker boxes of information to review in addition to having to re-interview those involved. Ms. Evans-Pare learned so much

Reference Notes
Iola Mosley

from watching Ms. Mosley in the court room and became a better attorney through their interactions. She is a remarkable attorney.

Academic law is Ms. Mosley's area of responsibility. Working with parents and children is the most emotional environment to work in. She is very responsive to others when they need assistance. She researches and thinks through a problem very quickly.

Ms. Mosley is highly respected by the Board and her recommendations are always good. She tries to find common ground with the parents, children, and staff. She understands that the District's purpose is to educate children but they have limited resources. She brings the parties together to negotiate an agreement that is feasible. Some who work in academics just see what the child needs but Ms. Mosley tries to find alternative ways to meet the needs of the child at a lower cost or in a less cumbersome way.

Student issues that Ms. Mosley handles are sensitive, she understands privacy. The case mentioned earlier was a first amendment case, which shows her experience in constitutional law. She also has experience with contract review, union contracts, and purchasing. She may have had experience in other areas of the law prior to her tenure in the school district.

Though they worked in different areas, their cases often meshed. Ms. Mosley always kept Ms. Evans-Pare informed. She did a great job managing her staff. She works well with the elected school board members even though they are a tough bunch. When she was working on an assignment that affected a teacher, she made sure they understood what the end goal was.

Ms. Mosley has not been involved in anything controversial. She volunteers with various community groups. Ms. Evans-Pare does not know of anyone who would disagree with this reference.

Ms. Evans-Pare would hire Ms. Mosley as a City or County Attorney and cannot speak highly enough of her. Her leaving will be a big loss to the District. Any organization will be lucky to have her. She has much to offer and is a very skilled Attorney.

Words or phrases used to describe Iola Mosley:

- Dedicated,
- Hard working,
- Friendly,
- Conscientious, and
- Works well with other people.

Reference Notes
Iola Mosley

Strengths: Works well with people, easy to get along with, makes information understandable for her audience even when they have varying degrees of knowledge pertaining to the law.

Weaknesses: Though not a frequent occurrence, she can be too in-depth in her explanation when the case is very complex and she is speaking with a person who has absolutely no knowledge of the law.

Shawn Bernard – Deputy General Counsel, Palm Beach County School District, FL
561-434-8750

Ms. Bernard has known Ms. Mosley since 2012. Ms. Bernard works in Labor and Employment and sometimes has questions related to custody issues and academic matters which are more in Ms. Mosley's wheelhouse. Ms. Mosley is always very helpful and pleasant.

Because they are peers they do not give each other deadlines, but when Ms. Mosley is asked a question she is always responsive. The information she provides related to custody or a family dispute is always accurate and has never been challenged or questioned.

Ms. Bernard recently asked Ms. Mosley what should happen when both parents have shared custody of a child but have different viewpoints on educational decisions. Ms. Mosley quickly helped her find the answer. Both parents have equal responsibility in shared educational decisions unless a custody order gives that right to only one parent. The school is never allowed to make educational decisions for a child.

In the District Ms. Mosley's area of responsibility is academic law. Everyone in the office adores her. She is very friendly and easy to talk to. Ms. Bernard and Ms. Mosley have a very close relationship.

Ms. Bernard cannot think of any situation involving Ms. Mosley that was controversial. Ms. Bernard does not know of anyone who has a different opinion of Ms. Mosley than the one expressed in this reference.

Ms. Mosley is an amazing coworker and would be an excellent addition to any team.

Words or phrases used to describe Iola Mosley:

- Pleasant,
- Joyful,
- Outgoing personality, and
- Helpful.

Reference Notes
Iola Mosley

Strengths: Other lawyers do not always take the time to help their colleagues but Ms. Mosley is always available and willing.

Weaknesses: None identified.

**Rod Montgomery – Area Superintendent, Palm Beach County School District, FL
561-804-3246**

For as long as Mr. Montgomery can remember Ms. Mosley has been part of the legal team in the Palm Beach County School District. She is the primary contact for superintendents when they need clarification on laws pertaining to schools. While they do not work together on a daily basis, all of their interactions have been positive.

Ms. Mosley's capabilities as an attorney are outstanding. She is very responsive and very timely in her responses. She solves problems and makes good recommendations to the elected body. Her decisions are always good. She negotiates well on behalf of her client and tries to find solutions to problems.

Their interactions are all based on school matters but Mr. Montgomery believes that Ms. Mosley also has experience in contract law. She keeps others informed through emails, phone calls, and in person conversations.

Absolutely nothing in her background would embarrass an employer. Mr. Montgomery and his colleagues look forward to working with her when issues come up. She represents their organization very well.

Mr. Montgomery would definitely hire Ms. Mosley and feels she would do well as a City or County Attorney. They hate to lose her but she is a good choice for any organization.

Words or phrases used to describe Iola Mosley:

- Personable,
- Knowledgeable,
- Sincere,
- Patient,
- Caring, and
- Has a beautiful singing voice.

Strengths: Works well with people, very pleasant personality, does not become rattled, maintains control, and knows the law.

Weaknesses: None identified.

**Reference Notes
Iola Mosley**

Mary Quesada – Legal Secretary, Palm Beach County School District, FL 561-434-7377

Ms. Quesada has worked for Ms. Mosley since 2012.

Ms. Mosley is a highly qualified attorney and she is a crack jack with her knowledge of the law. She is always on time to her meetings. She is very agreeable to handling new assignments and she never refuses a task given to her.

Ms. Mosley makes good decisions when dealing with the law. She negotiates well on behalf of the party that she represents. She tries to find solutions within the parameters of the laws and statutes.

In the school district Ms. Mosley has had much experience working with contracts and personnel matters. She keeps others informed on what she is working on through phone, email, and in person meetings. She works very well with others in the organization.

Nothing in Ms. Mosley’s background would concern an employer. Ms. Quesada does not know of anyone who has a negative opinion of Ms. Mosley.

Ms. Quesada would hire Ms. Mosley. She is a great person. She is very personable and will do well as a City or County Attorney. She is thorough in her research and represents her client well.

Words or phrases used to describe Iola Mosley:

- Personable,
- Knowledgeable,
- Strong when handling tough cases,
- Cares about many things,
- Beautiful signing voice, and
- Dynamic personality.

Strengths: Very knowledgeable, very approachable, does not try to push you off but is very patient in explaining matters to those who do not have her legal understanding.

Weaknesses: If anything, she is too nice.

**Elizabeth McBride – Counsel - Inspector General, Palm Beach County School District, FL
561-357-7673 561-601-8004**

Ms. McBride and Ms. Mosley have enjoyed a professional relationship since 1991. They work in the same office but cover different areas of the law.

Reference Notes
Iola Mosley

Ms. Mosley's capabilities as an attorney are very good. She is responsive and timely. She spends much time working in the school centers and answering questions on tough issues.

Because of her role Ms. Mosley does not give many recommendations to the elected body but she makes good decisions when dealing with the law. Her primary focus is academic law.

Ms. McBride does not know of anything controversial that relates to Ms. Mosley on a personal or professional level but she recommends that every employer run a background check on their applicants.

Without knowing the needs of the City in question Ms. McBride cannot recommend Ms. Mosley for the position but she would be a good City or County Attorney if her experience was the right fit. She has the capacity to rise to the level that the Client needs.

Words or phrases used to describe Iola Mosley:

- Energetic,
- Good litigator,
- Conscientious, and
- Diligent.

Strengths: Litigation.

Weaknesses: To Ms. McBride's knowledge she has never served as Council to an elected board, which should not be considered an ultimate weakness.

John Whittles – President Elect, Palm Beach County Bar Association, FL 561-469-1160

Mr. Whittles has known Ms. Mosley since around 2010. They interact at bar functions. Also, the bar association has a talent show and they have both participated several years in a row. Bar association members, judges, and the families of the attorneys attend the show. Ms. Mosley is a brilliant jazz singer. While Mr. Whittles and Ms. Mosley were preparing for their separate acts, and while others were performing, they talked backstage.

Mr. Whittles has never seen Ms. Mosley's day to day case management or watched her argue in front of a judge. However, performing in front of 1,500 people shows Ms. Mosley's ability to focus and handle the pressure of the spotlight, which are attributes that lawyers need. She is also very solution oriented.

Mr. Whittles is not aware of any controversy in Ms. Mosley's background that would embarrass an employer should the press investigate her past. He cannot imagine anyone not liking her.

Reference Notes
Iola Mosley

Mr. Whittles works extensively for municipalities. With his limited knowledge of Ms. Mosley's skills, he recommends her. In terms of personality, she has every attribute that a City or County would want in their Attorney. She is a great person.

Words or phrases used to describe Iola Mosley:

- Charming,
- Vibrant, and
- Talented.

Strengths: Directness, sense of humanity, politeness, likeable, communicates clearly, naturally good person, skilled at interacting with others.

Weaknesses: None identified.

Prepared by: Lynelle Klein
Colin Baenziger & Associates

CB&A Internet Research

*Internet – Newspaper Archives Searches
Iola Thomas Mosley
(Articles are in reverse chronological order)*

Palm Beach Post, The (FL)

November 6, 2004

PANEL TAPS COURT BENCH CANDIDATES

Author: *WILLIAM COOPER JR., Palm Beach Post Staff Writer*

A prosecutor, private attorney, court commissioner and two attorneys employed by the Palm Beach County School Board were nominated Friday to fill a vacancy on the county court bench, according to the Judicial Nominating Commission. The five nominees, which include two blacks and a Hispanic, were selected from among 50 applicants. The nine-member JNC conducted interviews with the applicants this week.

The nominees are:

- * Sandra Boss-Pardo, 50, who leads the School Board's litigation department;
- * Leonard Hanser, 52, a court commissioner who oversees cases where people are deemed a danger to themselves or the community;
- * **Iola Mosely**, 44, a black assistant state attorney;
- * Yvette Trelles, 38, a Hispanic sole practitioner, specializing in personal injury cases;
- * Gerald Williams, 54, a black labor relations attorney, who currently is the School Board's chief of staff.

Attorney Kathleen Kozinski, the JNC chairwoman, faxed the names on Friday to Gov. Jeb Bush, who will make the appointment in coming weeks. Bush must fill the post vacated by former County Judge Jonathan Gerber, who the governor promoted to the circuit court in August to replace retired Circuit Judge Mary Lupo.

*Internet – Newspaper Archives Searches
Iola Thomas Mosley
(Articles are in reverse chronological order)*

The Palm Beach Post

December 30, 2000

AFTER 28 YEARS, JORANDBY SAYS GOODBYE

Author: *John Pacenti*

After 28 years as the county's public defender, Richard Jorandby left the office on Friday with a message: "I will survive." That's the Gloria Gaynor disco song he asked **Iola Mosley**, a former assistant public defender, to sing at his goodbye luncheon attended by more than 120. The song underscored the bittersweet event as well as the uncertain future for the man who brought the office national notice for fighting the death penalty.

Some of the area's more prominent lawyers, such as Richard Lubin and Michael Salnick, spent time under Jorandby's stewardship. In attendance Friday was Circuit Judge Edward Fine, a former Jorandby employee, as well as Dorothy Wilken, clerk of circuit court and a good friend of Jorandby's. "Because of you, innocent people have been able to look back and say, 'Thank God, I had a good lawyer,' " said **Mosley**, who went on to private practice and now works for the county attorney's office. Jorandby leaves, though, under a cloud. The Florida Department of Law Enforcement is investigating allegations by two of his top assistants that he tried to extort campaign donations from them. Democrat Carey Haughwout, an attorney Jorandby hired to work for the office 13 years ago, defeated the Republican on Nov. 7, shortly after the scandal broke. Talk at the luncheon remained upbeat, though, focusing on Jorandby's accomplishments - not all of them in the courts. Former employee and now private defense attorney Michelle Suskauer noted that more than half a dozen couples met while working for Jorandby.

"It's a hotbed for romance," joked Suskauer, who met her husband, Scott, while both were assistant public defenders. Jorandby's daughter, Abigail, gave a touching speech about growing up watching her father work. She is now going to the University of Florida's law school. Richard Green, head of the capital appeals division, talked about Jorandby's passionate opposition to the death penalty and how hard it was on him in 1984 to watch two defendants die in Florida's electric chair. Jorandby insisted on being a witness.

His office took five death penalty cases to the U.S. Supreme Court. "He has some deeply held moral and spiritual views, and the death penalty is the ultimate violation of those views," Green said. Losing to Haughwout may cost Jorandby more than his office. If he could have served one more term and reached 30 years of service, his state pension would have increased from \$63,000 to \$500,000. He said he has no immediate plans but is open to continuing to work in state government. "I cherish these last 28 years," he said. "For a farm boy from North Dakota, I had my dreams, too. They were to become a lawyer and move to Florida, and that happened. Now it's time to go and it's time to say goodbye."

*Internet – Newspaper Archives Searches
Iola Thomas Mosley
(Articles are in reverse chronological order)*

The Palm Beach Post

June 2, 2000

**TWO IN TEEN BEATING CASE ENTER GUILTY PLEAS
STATE SAYS THE SIUTA BROTHERS DID NOT PARTICIPATE IN THE BRUTAL
ATTACK**

Author: *John Pacenti*

Gary Stern says it's a means to an end. Defense attorneys say it's another example of the state's case falling apart. Facts are that two brothers arrested for the brutal beating of Stern's teenage son, Joshua, will see no prison time under plea settlements Thursday. Elden and Siuta Siuta pleaded guilty to aggravated battery for keeping others from helping Stern during the attack at an unsupervised high school graduation party in Wellington last year. "I was hoping the Sterns were here so I can apologize to them," Siuta Siuta, 22, said. "If I can go back to that one day, I would make sure none of this would have happened."

He will have to remain on house arrest until July 27 and then start three years of probation. His 17-year-old brother faces the same sentence, but Circuit Judge Kenneth Marra won't make it official until July 13 as he awaits a probation officer's report to determine whether the teen should be listed as a felon or have his conviction withheld from his record. Assistant State Attorney Ken Selvig said the pair did not participate in the beating that left Stern, 16, in a coma for nearly three weeks with a fractured vertebrae, broken jaw, collapsed lung and other severe injuries. He still faces multiple surgeries. Charges of kidnapping, robbery and burglary with assault or battery were also dropped.

When the Siutas were arrested, Gary Stern called them "monsters" and "animals". Reached by telephone Thursday, he said the plea will help authorities complete their investigation, but declined to elaborate. "In about a week to 10 days you'll see why this was so important," he said. "This was done from a position of strength, not weakness." The Siuta brothers have said they will cooperate. Thursday's pleas leave only two of the seven original suspects charged with attempted second-degree murder and in jail: James "Jay" McHugh, 17, and Roberto Molina, 27. Selvig made it clear Friday that it was Molina who did most of the beating last June 5 because Stern had reneged on a \$650 marijuana deal. McHugh, called Molina and others to the party when he saw Stern there, police said. Trial is set for Aug. 25.

Three suspects originally arrested and jailed for eight months - Philips Siuta, 19, and his uncles, Fetalai Ilimaleota, 26; and Faapiano Ilimaleota, 34 - had charges dropped after it became apparent they were misidentified by teenagers at the party. "One witness told me the cops held him for hours until he made an ID," said **Iola Mosley**, Elden Siuta's attorney. Sheriff's detectives couldn't be reached for comment Thursday. "The state's case, especially as to my client, started crumbling," said Jon Kaplan, Siuta Siuta's attorney.

*Internet – Newspaper Archives Searches
Iola Thomas Mosley
(Articles are in reverse chronological order)*

The Palm Beach Post

February 9, 2000

IN COURT

LAKE PARK - A former lieutenant has sued the town police department, saying it illegally retaliated against him when it asked him to resign because of his testimony in a racial discrimination trial. Julius Barone resigned in September after testifying for Mack Davis, the town's only black police officer, who had sued the department alleging racial discrimination. Three other officers and Chief Jeff Lindskoog's secretary were fired after the town said they lied on the stand. They also have sued. Barone filed his suit Monday in Palm Beach County Circuit Court. A jury last year agreed the department discriminated against Davis, but only awarded him \$1. A judge later overturned the discrimination verdict, meaning the town wouldn't have to pay Davis' legal fees. Davis is appealing.

WEST PALM BEACH - The adult guardian of a troubled youngster who was struck by a car two years ago after jumping from a school bus on Okeechobee Boulevard sued the Palm Beach County School District on Monday. Carol Goldberg, a court-appointed guardian, claims the district was negligent because Lamarcus Sims, who at the time was a fifth-grader at Indian Ridge Learning Center, was able to get out of his seat and leave the bus through a rear emergency door. Sims jumped out of the bus and attempted to run across Okeechobee Boulevard during rush hour May 29, 1998, and was seriously injured. In the lawsuit, Goldberg alleges the bus driver and an aide failed to take the proper safety measures to keep Sims on the bus.

The family of a 6-year-old girl run over by a school bus last year sued the Palm Beach County School District on Tuesday in Palm Beach County Circuit Court. On March 2, Ariel Dent of Riviera Beach crouched in front of the bus to pick up some papers and the front and rear tires rolled over her at 147 W. 28th St. She suffered a broken wrist, thigh and pelvis, police said at the time. The bus driver, Wayne A. Ricketts of West Palm Beach, was not named in the suit.

WEST PALM BEACH - Bob Sanders, the last city administrator under former Mayor Nancy Graham, sued another former employer Tuesday for wrongful termination, claiming Stuart businessman David Lester's company owes him more than \$1 million in guaranteed wages. While still working for the city in January 1999, Sanders agreed to take the post of chief executive officer with Lester's International Fine Art Expositions. The company conducts sales of fine art, antiques and jewelry in Beverly Hills, Hong Kong and downtown West Palm Beach. The contract offered a guaranteed \$250,000 a year over five years and a percentage of profits, Sanders said in the suit, filed in Palm Beach County Circuit Court. He started work in April, after leaving his city job, but was terminated in November, the suit said. "He wanted me to handle leasing and that was not the deal," Sanders said Tuesday. Lester said the disagreement is contractual and subject to arbitration.

WEST PALM BEACH - The admitted strangler got 15 years in prison, the woman who heard the dying man's gurgling sounds got life and the third person present at the 1998 robbery and

Internet – Newspaper Archives Searches
Iola Thomas Mosley
(Articles are in reverse chronological order)

murder of Charlie Marlow was convicted of manslaughter Tuesday. Jurors deliberated about six hours before convicting William "Terry" Jones on the lesser charge of manslaughter rather than first-degree murder. Jones' attorney, **Iola Mosley**, argued Jones did not know the robbery was going to take place and didn't participate in the beating. But Assistant State Attorney Marc Shiner said Jones and two others robbed and killed Marlow in his suburban West Palm Beach home to score some quick money to buy drugs.

*Internet – Newspaper Archives Searches
Iola Thomas Mosley
(Articles are in reverse chronological order)*

The Palm Beach

March 26, 1998

MAN FOUND GUILTY IN CARJACK-MURDER OF BIBLE TEACHER

Author: *Scott Hiaasen*

Jurors found Sergio Soto guilty Wednesday of first-degree murder and five other charges stemming from the carjacking and shooting of a Bible teacher in 1995. Prosecutors said Soto, 21, and another man, Jason Diaz, abducted Rafael Costa, 25, from a Lake Worth gas station to steal Costa's Ford Mustang. With the help of a third man, Ernesto Brady, they took Costa to a remote spot on U.S. 441 and shot him four times. Though Diaz denied shooting Costa, Assistant State Attorney Dan Galo said he should be convicted of murder because he helped with the carjacking and accepted money and a beeper from the theft.

Soto said the carjacking was Diaz's idea, and that Soto was threatened at gunpoint into cooperating. "(Diaz) would have shot Sergio just as surely as he shot and killed Mr. Costa," said Soto's attorney, **Iola Mosley**. Brady pleaded guilty in the murder and was sentenced to 40 years in prison. Diaz is a fugitive. Prosecutors are asking Circuit Judge John Phillips to sentence Soto to death.

Costa's sister, Anna Valdez, said Soto's conviction was more important to her than his sentencing - as long as he's never freed from prison. "Whatever justice he's getting is for the rest of his life," she said.

*Internet – Newspaper Archives Searches
Iola Thomas Mosley
(Articles are in reverse chronological order)*

The Palm Beach Post
September 23, 1995

MOTORIST CONVICTED IN TRAFFIC SHOOTING

Author: *CHRISTINE STAPLETON*

An all-white jury asked to decide whether racism or insanity motivated Clurs Harris III to shoot a white businessman decided Harris was a bigot and found him guilty of first-degree murder on Friday. Harris showed no emotion as the verdicts were read after just two hours of deliberations. Besides the first-degree murder charge, Harris was found guilty of burglary of a car and shooting into an occupied vehicle. The jury will reconvene Wednesday to decide whether Harris should die in the electric chair or spend the rest of his life in prison.

After the verdicts, one of Harris' attorneys blasted prosecutors for focusing on race. "I really find it hard to understand that in 1995 we're still playing the race card when there's a black defendant and a white victim," Assistant Public Defender **Iola Mosley** said. "Race had no place in this case. This man is not a racist." Harris, 23, shot Russell Bean, 46, of Wellington four times in the head and neck at close-range as the two were stopped in traffic at Palm Beach Lakes Boulevard and Okeechobee Boulevard on Aug. 2, 1994. Harris' attorneys and every expert who testified said Harris was insane at the time.

Although Harris has no history of mental illness, friends and family members testified to bizarre behavior for months leading up to the murder. Harris frequently talked to himself and complained that he heard voices, they said. As for the race issue, Harris threatened to kill a black co-worker moments before he shot Bean but the co-worker ran away before Harris could shoot, Assistant Public Defender Alysoun Powell said. "Clurs was ready to kill a black man - that wipes out the race issue," Powell said during her closing argument. "Not one person walked through that door and said Clurs Harris hated white people."

But during cross-examination of defense witnesses, prosecutors repeatedly asked Harris' friends and family if they had ever heard Harris refer to white people as "Crackers" and "rednecks." All the defense witnesses said they had. And shortly after Harris was arrested he told police that he had "killed a cracker in West Palm Beach." Harris also liked to listen to Snoop Doggy Dogg and Ice Cube, gangsta rappers whose music has been decried as racist. Circuit Judge Stephen Rapp refused to let the jury hear two of Harris' favorites.

"He's bitter toward white people and he thought they were doing him wrong," Assistant State Attorney Bunnie Lenhardt said. As for introducing race at the trial, prosecutor Robert Gershman said race would have been an issue regardless of the racial composition of the jury.

*Internet – Newspaper Archives Searches
Iola Thomas Mosley
(Articles are in reverse chronological order)*

The Palm Beach Post
September 7, 1995

**MURDER SUSPECT'S PLEA DEAL REFUSED
'I'M NOT THE SHOOTER,' JERRI GAITHER TELLS JUDGE, BUT DECLINES TO
SAY MORE**

Author: *VAL ELLICOTT*

A judge refused to accept a plea deal for murder suspect Jerri Gaither Wednesday after Gaither declined to reveal her role in the 1993 shooting of Christina Racey. Gaither, intending to plead guilty to second-degree murder with a firearm, admitted she helped kill Racey but was reluctant to provide details during a brief interrogation by Circuit Judge Virginia Gay Broome. "I'm not the shooter, your honor," Gaither said, without elaborating.

Broome refused to accept the plea, which called for a 17-year prison sentence. Prosecutor Dan Galo said the state agreed to a plea because convicting Gaither of first-degree murder would be difficult largely because of the lack of a clear motive in the case. Galo said prosecutors believe that Gaither, 38, killed Racey, 44, between July 8 and July 13, 1993 in Boca Raton during a dispute over prescription drugs that Racey was providing to Gaither.

In addition, Racey had "bookkeeping knowledge" of illegal escort services Gaither was operating, Galo said. Gaither blamed Racey's slaying on a boyfriend, Salah "Avner" Levy, saying Levy killed Racey because Racey was demanding more money for Percodan pills she was selling to Gaither. Prosecutors initially charged Levy with murder but dropped the charge for lack of evidence.

Gaither's trial remains set for Oct. 16. Jerri Gaither (right), accompanied by public defender **Iola Mosely**, stands before Palm Beach County Judge Virginia Gay Broome on Wednesday. The judge refused Gaither's plea deal in a 1993 slaying case.

*Internet – Newspaper Archives Searches
Iola Thomas Mosley
(Articles are in reverse chronological order)*

The Palm Beach Post

August 22, 1995

MAN SENTENCED TO LIFE IN SHOOTING DEATH OF EX-WIFE

Author: *VAL ELLICOTT and CHRISTINE STAPLETON*

William Brunner will spend at least the next 25 years in prison for the 1993 murder of his ex-wife, a woman who remains the object of his obsessive love, even in death. "Bill still loves her," assistant public defender **Iola Mosley** said Monday, shortly after a judge sentenced Brunner to life in prison without possibility of parole for 25 years.

"He still speaks of her in the present tense. He would never let (**Mosley** and assistant public defender Peggy Natale) say anything bad about her." Brunner, 34, was convicted June 21 of first-degree murder for shooting Kim Brunner, 24, during an argument outside her apartment west of Boca Raton. On Monday, Brunner said he feels "really hurt and lost."

"When everything is said and done, I still have the same problems." Brunner, who is appealing his conviction and sentence, said he has been seeing a therapist at the jail weekly. Brunner's history with his ex-wife was marked by violence and a constant cycle of separation and reunion, witnesses testified at his trial. Defense attorneys told jurors that Brunner suffered from a hyperactive thyroid, the lingering trauma of an abusive childhood and a lifetime of drug and alcohol abuse. They said he was temporarily insane when he grabbed a gun from his ex-wife and shot her, then slashed her throat.

The same jurors who convicted Brunner split 6-6 on whether he should die in the electric chair. Under Florida law, a tie vote is considered a recommendation for a life sentence. "Hopefully, he won't be getting out anytime soon," said Lenny Lombardo, Kim Brunner's brother. "He's a murderer and he's going to serve his time." Brunner's mother, Doris Christensen, said she was "very relieved."

"At least, even if he spends the rest of his life in jail, he can still be with us." Brunner also was convicted of burglary with assault or battery while armed, shooting into an occupied vehicle and aggravated stalking. Circuit Judge Stephen Rapp ordered that the sentences for those counts run concurrently with the life sentence.

*Internet – Newspaper Archives Searches
Iola Thomas Mosley
(Articles are in reverse chronological order)*

Ocala Star-Banner (FL)

January 21, 1995

Deputy under attack helped by John Zile

Author: *Mike Folks*

FORT LAUDERDALE -- John Zile, facing murder charges in the death of his stepdaughter, was one of three prisoners who came to the aid of a jail deputy under attack by another inmate, jail officials said on Friday. Zile, 32, helped Deputy Lawrence McLaughlin subdue Kevin Kerli when the deputy was assaulted on Jan. 7 at the Palm Beach County Jail. McLaughlin received minor injuries in the attack. Kerli, who was in the jail on charges of unarmed burglary and grand theft auto, was locked down and will remain in his cell until a disciplinary hearing. The unprovoked attack on the deputy occurred in the day room of a 24-bed maximum security mental health housing unit for male prisoners, a Department of Corrections report shows. The unit at the County Jail on Gun Club Road houses inmates who need mental health treatment.

Lt. Chris Kneisley, an inmate classification supervisor at the jail, said Zile was not being held in the unit to receive mental health treatment, but because of threats from other inmates in the general jail population. Zile and his wife, Pauline, 24, each face first-degree murder and child abuse charges in the September slaying of Pauline's daughter, Christina Holt, 7. The other two inmates who aided the deputy were Jon Barnocky, jailed on a charge of aggravated assault on a person 65 years or older, and Michael Wells, held for violation of probation for a drug conviction. Zile, Barnocky, Wells and other inmates were watching television in the unit's day room about 1:45 p.m. on Jan. 7 when Kerli attacked Deputy McLaughlin from behind and struck him on both sides of his head. As McLaughlin struggled to subdue Kerli, Zile, Barnocky and Wells joined the fray.

McLaughlin and the three prisoners brought Kerli down on the floor and held him there, the report says. McLaughlin tried to call for assistance on his radio, but did not hear a response. He then had the nurse push an "officer's duress" button on a nearby control panel, and six deputies rushed to the unit. McLaughlin, who could not be reached for comment, was treated by a nurse for minor injuries to a finger, a knee and a mark on his neck. None of the inmates was injured. Kneisley said one deputy, a mental health technician and a nurse routinely are stationed in the unit. At the time of the attack, only McLaughlin and the nurse were there, with McLaughlin standing at the door. After learning of her client's deed, public defender **Iola Mosely** seized the moment on Friday in a courthouse corridor to tell reporters about it. His actions, she said, show the public another side of John Zile. "We've got a bad case, and it's a case where the public's perception has been that he's a horrible, evil person," **Mosely** said. "I think it was really a brave thing to do. It certainly shows he's not an evil, vicious person."

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Iola Thomas Mosley
(Articles are in reverse chronological order)*

The Palm Beach Post

November 18, 1994

KRISCHER ACCUSED OF GOING TOO FAR

Author: *CHRISTINE STAPLETON*

As the legal drama surrounding the death of 7-year-old Christina Holt unfolds, the focus has shifted from what John and Pauline Zile may have done to what State Attorney Barry Krischer said and did. Attorneys for the Ziles want Krischer off the case. At a court hearing today, a judge will hear their complaints that Krischer has been too eager to give news conferences and that he may have overstepped his role as prosecutor by taking part in the questioning of the Ziles. In the wake of the criticism, Krischer, a seasoned prosecutor and veteran criminal defense attorney, is playing it safe. Krischer is declining to comment until a judge hears the evidence against him. But local attorneys familiar with Krischer's legal skills doubt that he has made the legal blunders attributed to him.

“He's smart, he knows the law cold, and I believe he would not act if he didn't think it was legal,” said defense attorney Richard Lubin. “He's aggressive, but he's fair.” Ellis Rubin, Pauline Zile's attorney, launched the first attack on Krischer. Rubin relied on newspaper articles and televised reports to blast Krischer for “self-servingly” trying to “justify the action of his office” and to “glorify himself for personal gain.” Rubin wants the governor to appoint a special prosecutor. Coming from Rubin, a Miami lawyer frequently accused of pandering to the press, such criticism could sound hollow to a judge.

“That motion is ridiculous,” Lubin said. “Ellis Rubin has built a reputation on media shows, and he's created one here.” In court papers filed on Thursday, Krischer's office described Rubin's effort as a “deliberate attempt to mislead the court and pander to the public.” Listening to Rubin's motions “would be a waste of the court's time,” Assistant State Attorney Scott Cupp wrote. Attorneys for John Zile may take a different tack to get Krischer off the case. Assistant public defenders Peggy Natale and **Iola Mosely** said they may ask Krischer to step down because of his personal involvement in the investigation.

“If he was there when either defendant gave a confession, it may be that he shouldn't be the prosecutor,” Natale said. “Barry Krischer may very well be a witness in this case.” At a court hearing this week, Pauline Zile's mother, Paula Yingling, said Krischer also talked to her daughter. According to Yingling, after Pauline Zile revealed what little she knew about her daughter's grave, Krischer said: “Why should I believe you? You've been lying.” During the interview with detectives at the Riviera Beach Police Department on Oct. 27, Krischer was identified as a man with considerable power - the man who “could determine whether she spent her life in jail or (would) go to the electric chair,” Yingling said.

John Zile's attorneys have declined to comment on how involved Krischer may have been in questioning John Zile. Police say two Riviera Beach detectives and an investigator with the state attorney's Office questioned John Zile over the course of nine hours at the Riviera Beach Police

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Station. Krischer was at the station but never directly questioned Zile about the case, a source said.

CONFESSION MAY BE VOIDED

However, a newspaper reporter who interviewed Zile has reported that Krischer played a crucial role in the case. A Miami Herald story based on a jailhouse interview by reporter David Kidwell says Zile alleges police stopped questioning him after he asked for a lawyer, then returned. Zile's wife had confessed. "They said their number one priority was to find Christina," Zile told Kidwell. Zile asked how he could help. Later, Krischer came into the room. Zile's account of the conversation, according to The Miami Herald:

Krischer "said he knew that I had asked for an attorney and that meant they couldn't talk to me anymore, but he said I needed to make some decisions. They wanted to find Christina. . . . He said I was already charged with first-degree murder and that he couldn't make any promises, but that maybe it could be involuntary manslaughter or accidental death if I cooperated." Zile then decided to take police to Christina's grave, according to the Herald. If Zile's story is true, his attorneys likely will ask a judge to throw out his confession and all the evidence discovered as a result of it - including Christina's body.

Investigators cannot suggest the possibility of special treatment as a way of persuading suspects to talk, said John Tierney, a criminal defense attorney. "All you should tell them is that if they cooperate it will be brought to the attention of the prosecutor handling the case. They can't make any promises." Zile may have initially told detectives that he did not want to talk, then changed his mind - as police say happened. Police could then legally resume the questioning. "It has to be very clear that the suspect initiated the second round of questioning," Tierney said. To prove Zile's rights may have been violated, his attorneys likely would question Krischer about his role in the investigation. And that could make Krischer a witness in his own case.

CASE OF ILLEGAL CONFESSION

However, that doesn't mean Krischer overstepped his role as prosecutor. Florida law gives prosecutors the right to investigate and prosecute crimes. Prosecutors "conduct investigations all the time," Lubin said. "If they didn't, people would be screaming how come." When he came to office in January 1993, Krischer established a policy of sending prosecutors to murder scenes. He hoped to ensure that evidence was properly gathered and that police followed legal procedures that would avoid the situation he now finds himself in.

"It's probably a good practice," Tierney said. "But a prosecutor has to be smart enough to not get into a situation where they become a witness." If a judge throws out Zile's confession, the state's case could be doomed. Although it's rare in Palm Beach County, first-degree murder charges have been dropped because of illegal confessions.

In 1989, Palm Beach County prosecutors dropped a first-degree murder charge against Matthew Proctor after a judge ruled that prosecutors could not use the confession he gave to police about his role in the murder of Linda Sue King, the ex-wife of Proctor's best friend, Jeffrey Ashton. In

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that case, police told Proctor that they were after Ashton and that anything he said could not be used against him because they had not read him his Miranda rights. Proctor then described the murder and how he and Ashton buried King's body. Proctor pleaded guilty to being an accessory and is now free.

'INEVITABLE DISCOVERY'

But in Zile's case, prosecutors could rely on a 1977 U.S. Supreme Court case that created a controversial legal doctrine called "inevitable discovery." On Christmas Eve 1968, Robert Anthony Williams killed a 10-year-old girl and buried her near Des Moines, Iowa. After his arrest, Williams, like John Zile, invoked his right to an attorney.

Police immediately stopped questioning Williams. But while driving Williams to jail, officers struck up a conversation. Knowing that Williams was a former mental patient and deeply religious, they told him that the child deserved a Christian burial. Williams, like Zile, then led police to the girls' grave. Williams was convicted of the girls' murder, but the U.S. Supreme Court ordered a new trial, ruling that police had denied him the right to have an attorney present during questioning.

Although Williams' case seemed doomed, prosecutors successfully argued that police would have "inevitably discovered" the girl's grave. Williams' confession was allowed, and he was convicted again. "If police can demonstrate that they would have inevitably found the body, they still can use the evidence even though there a constitutional violation," Tierney said. "I would say inevitable discovery could play a role in this case."

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Iola Thomas Mosley
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Miami Herald, The(FL)
July 8, 1994

ACCUSED KILLER OFFERED DEAL BY PROSECUTORS

Author: *JUDY PLUNKETT EVANS Herald Staff Writer*

Michael Hoelz, accused of killing a man and a 9-year-old boy by setting fire to their duplex, has been offered a plea deal that could bring him as little as six months in prison, but Hoelz may still want to go to trial. Palm Beach Circuit Judge Marvin Mounts, who said last week that he wanted to consider the case before agreeing to the deal, said Thursday that he would accept it. But Hoelz wants more time to think about it, saying he is not emotionally ready to give up his right to a trial. Defense attorney **Iola Mosley** said Hoelz is reluctant to take the deal because he is innocent. Hoelz has until next week to decide whether to accept the offer.

"He needs to make a decision about this, and the reason it's so hard for him is that he didn't do it," **Mosley** said. Prosecutors and Hoelz's attorneys worked out a deal that requires Hoelz to plead no contest to two counts of manslaughter, in exchange for a prison sentence of 10 years. Because prisons are crowded and Hoelz already has spent two years in jail, corrections officials said, he could serve as little as six months.

Prosecutors offered the deal because they already have tried Hoelz once and that case ended in a mistrial when jurors could not reach a unanimous decision. The state offered no physical evidence to dispute the defense claim that the fire was caused by a faulty electrical plug, not arson. Fire gutted the Lake Worth duplex where Anthony Parker, 9, lived with his three brothers and sisters, his mother and her fiance Lorenzo Smith, 28. Parker died of smoke inhalation during the May 30, 1992, fire, and Smith died of severe burns about a month later. The three other children also were injured, one of them seriously. Police arrested Hoelz, saying he bragged to a nephew that he started the blaze because Smith owed him \$24.

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The Palm Beach Post

March 20, 1994

SERVICE SORORITY GIVES TEENS 'STAY IN SCHOOL' MESSAGE

Author: *JULIANA RATNER Palm Beach Post Staff Writer*

The 100 teens were somewhat restless Saturday morning but listened closely to advice about self-esteem and how to get ahead in the world. The second annual Teen Conference at Ezell Hester Community Center was sponsored by the South Palm Beach County chapter of Delta Sigma Theta, an international African-American public service sorority. The workshops for middle and high school students were about self-esteem, peer relationships and cultural awareness. "The purpose is to get across to kids that they can be whatever they want to be," said Jayne Patrick, the sorority's program planning chairperson.

To get input from the audience and find out what they think is important, Marissa Wedges of Africare crisis center said. She asked where they want to be in one, five and 10 years. The goals called out ranged from owning a rehabilitation center to playing football for the Dallas Cowboys. Rather than simply lecturing the kids, she asked them to say what they think is necessary to get ahead and what could possibly hold them back.

Iola Mosley, a Palm Beach County attorney, spoke about her career. She gave an old message, to stay in school, but knew how to reach the young audience. "I get paid," she said. "I get paid good money because I stayed in school." The connection between school and money was a good one, because it was **Mosley's** presentation that caught the attention of one girl.

Angel Woody, 13, of Boynton Beach, said she was talking through some of the presentations, but listened when **Mosley** spoke. "I want to be a lawyer," Angel said.

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The Palm Beach Post

October 10, 1993

BACK ON THE STREET?

Author: *RON HAYES*

Here we go again. Another spin of the revolving door and Dennis Lee Moore is back home. Back on the street. Back on drugs and headed for trouble. Merrell Conkin saw him when she pulled into the take-out lane of Kentucky Fried Chicken on Blue Heron Boulevard. While she placed her order, he waited up ahead by the front door, nervously glancing around.

Conkin, 49, ordered lunch, then took some money from her wallet while she pulled forward to the pick-up window. It was just after noon last June 16. Suddenly, as she held out the bills with her left hand, he grabbed her wrist, bent her arm painfully back, tore the money from her fingers and ran. After the drive-through clerk and several co-workers had chased him down, the man told Conkin he was sorry for taking her \$3.

His name was Jimmy Lee Moore, he told police. Later, they learned he was Dennis Lee Moore, 31, who had grown up less than a mile away. He had lied, Moore said, because he didn't want to get in trouble. Dennis Lee Moore has been arrested 23 times since 1980 - for trespassing, loitering and prowling, retail theft, strong-arm robbery, aggravated assault, buying and selling drugs. In the past 13 years, his family and psychiatrists have gone to court 15 times to have him Baker Acted - involuntarily examined or treated for paranoid schizophrenia and drug abuse. Finally, in February 1991, a judge ordered him put on a waiting list for South Florida State Hospital in Pembroke Pines, west of Fort Lauderdale. Eleven months later, a bed was found. After 15 months in the hospital, Dennis Lee Moore was back in Palm Beach County.

South Florida State Hospital is the only state facility serving South Florida's 4.5 million citizens. But less than a month before Dennis Moore was arrested at Kentucky Fried Chicken, officials with the state Department of Health and Rehabilitative Services announced their solution to a looming class-action suit that accused the hospital of inhumane conditions. They would close it.

* The crisis at South Florida State Hospital has been a long time coming.

More than 15 years ago, in April 1978, Circuit Judge Edward Rodgers complained that Palm Beach County mental patients he sent there for long-term treatment were being released too quickly. Patients were going from the 45th Street Mental Health Center to the state hospital, Rodgers said, then being returned to the community and winding up right back in 45th Street. The "revolving door syndrome" repeatedly returned patients to court for involuntary hospitalization - some after only two weeks.

"Two weeks does not appear to be long-term treatment to me," the judge said then. "Either we're jumping the gun on our evaluations or South Florida has a miraculous cure." When he complained about the premature patient releases to hospital administrators, Rodgers said, he was

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told the hospital didn't have enough staff or money. In 1969, the hospital had 1,700 patients. Today, that number has been reduced to about 350 through deinstitutionalization - a well-meaning attempt to return patients to their own communities for care.

But much of the promised care was never provided. Patients wound up back on the streets, and the hospital is still not accredited by the Joint Commission on the Accreditation of Health Care Organizations, a private group that sets national standards.

* The first signs of paranoid schizophrenia generally appear in the late teens or early 20s. One day in 1977, when Dennis Moore was in 10th grade at Suncoast High School, he and another boy had a disagreement. Moore came home, slipped past his sleeping mother, took his father's handgun from the closet and returned to school. "I don't know whether he aimed at somebody," his mother says. "Some kind of way, the Lord just fixed it that the bullet ricocheted and no one got hurt, but really it seems like he killed himself, because it really destroyed him. He hasn't been the same since."

Dennis Moore's mother, Merdis, is a school bus aide who helps handicapped children get to and from school. His father, Nathan, was a maintenance worker for the city of North Palm Beach until kidney disease forced him to retire. Of their four children, only Dennis has suffered from mental illness. The Moores have lived in the same house in Riviera Beach since 1965, but today bars guard the windows and a hurricane fence encircles the yard.

"We've had about five break-ins," Nathan Moore says in a voice thin and weary from his weekly dialysis. "It's bad everywhere," his wife agrees, "but some areas are badder than others." When he was 4, Dennis fell on a flower vase and had 21 stitches on the side of his head. At 10, he was hit with a soda water bottle and had 20 more on the other side; and then at 14 he fell playing basketball.

"He had a nickname because he had so many cuts and falls," his mother says softly. "They call him Cut, and he hates that. So he's had a lot of head injuries. I think that had a lot to do with it, too." After Dennis was thrown out of school, Merdis Moore says, his mental problems seemed to emerge. He couldn't hold a job. He fought. His father recalls a time when Dennis tried to panhandle quarters, even though he had money in his pocket. Sometimes he imagined people were after him. He talked to himself. Eventually, he started hearing voices. "I think most of the time he tried to ignore the voices," his mother says, "but I don't know whether he ignored the voices all the time. Telling him to do bad things, you know."

On April 14, 1980, two days after West Palm Beach police arrested him for shoplifting - his second arrest - the Moores petitioned the court to have their son involuntarily examined. Mentally ill need help and all so on durgs, his mother wrote. Her son stayed out late, stole things and got into fights, she told the court. If he didn't get help, she feared, someone might hurt him, or he might hurt someone else. At the 45th Street Mental Health Center, a staff psychiatrist concluded that Dennis was suffering from a personality disorder manifested by poor social skills, drug abuse, theft and lack of remorse.

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The petition and response were the first in a long, sad series of legal papers that now fill a file nearly two inches thick. They document one patient's 13 years in South Florida's mental health system. In 1985, his parents wrote the court he hadn't held a job for more than two weeks since 1977. His mind is very bad, he can't remember things I tell him. Please help him. Thank you. He fights his sister. Please put him somewhere in a mental place so he can get well. In 1986 - after 16 arrests - he was admitted to the crisis stabilization unit at 45th Street Mental Health Center and discharged the same day with an appointment for outpatient treatment.

“He was in and out of 45th Street so many times I couldn't even begin to count it,” his mother says. At the same time, his rap sheet was growing longer - for petty larceny, drinking in public, trespassing, retail theft and aggravated assault.

Finally, in August 1989 - nine years after his parents first sought psychiatric help for their son - Moore was diagnosed paranoid schizophrenic. “Mr. Moore's drug problem is chronic and exasperated by his major mental illness,” testified Dr. Gayle Kesselman, his psychiatrist at 45th Street Mental Health Center, and Circuit Judge Vaughn Rudnick ordered him sent to the Better Way Halfway House at Parkside Recovery Center in Hialeah.

Shortly after arriving at Parkside at 2 p.m. on Sept. 11, 1989, he ran away. Goes to houses trying to get money for drugs. Acts like a 3 year old child and sometimes violent. Said he burn house down. He threatens us, all the family members. Was his mother ever afraid of him? “Usually, no,” she says.

In August 1988, a private monitoring agency called the Advocacy Center for Persons with Disabilities investigated South Florida State Hospital. Nurses slept on their shifts, the agency found, and paint was peeling from the walls. Patients were ridiculed and put to bed or gotten up for staff convenience. Soap, dentures, toilet paper and other personal hygiene articles were being withheld. The resulting public outcry brought a new administrator and \$1.8 million to repair leaking roofs, renovate living quarters and train new employees.

During an annual legislative orientation tour in February 1990, flower beds had been planted and vertical blinds installed; but some of the better-groomed, better-clothed patients said paintings and curtains had been put up the day before the tour. Still, nearly everyone agrees the hospital is much improved. In the Jefferson residence building, for example, 60 patients share two floors. Each room is nondescript but neat, with four single beds, four wardrobes and four bed tables. A plastic laundry basket sits under each table. The windows are large jalousies with screens but no curtains. The walls are bare except for the occasional assembly-line art - a cloyingly cute photograph of a koala bear, perhaps.

During the day, seven staff members serve each floor; at night, four staff members remain on duty. Condoms and other forms of birth control are provided to the patients on request. Good behavior is rewarded with privilege points, which patients may use to join field trips to the movies or malls. A clothing boutique sells patients' handicrafts, and their artwork is on display. But in September 1990, a joint report by the Public Citizen Health Research Group and the

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National Alliance for the Mentally Ill trashed whatever cosmetic improvements had been made. "South Florida State Hospital is as physically deteriorated as any state hospital in the nation," the report concluded.

Wards were still crowded. State standards require 15 beds for every 100,000 people in the five counties the hospital serves between Vero Beach and Key West; but the 350-odd beds average out to only about 8 per 100,000 - and they're almost always filled. At one point, some patients were on waiting lists as long as five years, and some reforms brought problems of their own. In 1991, 104 mental patients simply walked off the grounds. In the mental-health bureaucracy, however, hard facts are often softened to pale euphemisms.

Mental patients are "consumers of mental health services." Walking away is called "eloping." The hospital grounds are the "campus." Last year, after the wards were unlocked during the day under pressure from patient advocates, the number of consumers who eloped from the campus rose to 187. But a crisis was already brewing. In April 1989, the Tallahassee-based Advocacy Center had filed a class-action federal lawsuit to force the state to spend whatever was necessary to fix South Florida State Hospital.

* Dennis Lee Moore was arrested and sentenced to five months and 29 days for leaving Parkside Recovery Center, the sentence to be suspended if he completed a drug treatment program. He didn't. On Nov. 6, 1990, Riviera Beach police arrested him for buying cocaine. Took money from his mother. Worry her all the time. Will not take his pills. He talks to his self all the time and steal from his mother and father. Finally, on Jan. 30, 1991 - 11 years after his parents sought help - Dr. Kesselman asked the courts to put Dennis in South Florida State Hospital.

"He is unable to function in the community and needs long-term care," the psychiatrist wrote. Circuit Judge Rudnick found Moore to be "a chronic paranoid schizophrenic" and ordered him held at 45th Street Mental Health Center until a bed could be found at South Florida State Hospital. Nearly 11 months later, in December 1991, he arrived at the hospital. "He was down there for a year and I would go down often to visit him," his mother says. "He was doing fairly well, and when he got out he was doing real good."

After Moore had been in the state hospital for 15 months and 14 days - he eloped once, overnight - doctors decided he had made enough progress to try returning to Palm Beach County. On March 17, he was placed in the Phoenix program, a halfway house run by the 45th Street Mental Health Center. The Phoenix program takes a three-tiered approach to easing mental patients back into the community. In Phoenix I, patients are continually monitored and spend their days in vocational programs at the 45th Street Mental Health Center. In Phoenix II - 12 bungalows on Metcalf Court in West Palm Beach - residents are left alone overnight after showing they can prepare meals and take their own medication.

Phoenix III, an old apartment building at 2722 N. Dixie Highway, is for residents who have shown they can hold jobs and get by with only occasional drop-in visits by caseworkers. "Everything you see here," says James Crawford, the program's director of residential services,

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“you could multiply by six to meet the need.” Dennis Moore was to try the Phoenix I program for 30 days. If he did well, his stay could be extended for another 30 days.

The only problem was, Phoenix I is housed in a converted motel at 2901 Broadway in West Palm Beach, a strip of low-rent real estate sometimes known as Crack Alley. “It’s a really bad area,” Merdis Moore says. “It’s right on Broadway where all the dopers and prostitutes are.” Within days, Dennis was calling his mother. “He kept telling me, ‘Mama, they’re trying to get me to start back using drugs,’” Mrs. Moore recalls. For a while, Dennis did well, but in early June he was kicked out of the Phoenix program for smoking crack cocaine with a dealer in his room. After one night in a rented room found for him by a caseworker, Moore was back on the street and his parents filed another petition to have him involuntarily examined.

Mentally ill on dope and drinking if he can get some, any thing to get hi. take little ting, and not take his medi. don’t have anyplace to live. But when Mrs. Moore went to file the petition, she was too late. On June 12, Mangonia Park police arrested him for snatching a \$65 money order and \$5 in cash from a woman leaving a check-cashing service.

Four days later, he was arrested at Kentucky Fried Chicken for grabbing Merrell Conkin’s lunch money. Awaiting trial on charges of strong-arm robbery, petty theft, burglary to a vehicle and resisting arrest without violence, Moore recently talked about his life during a phone call from the county jail. “I don’t think I have a mental problem,” he said. “That’s what I think it is - just drugs. They be saying I’m a paranoid schizophrenic, but I don’t know what they be talking about.” He was happy, he said, in the Phoenix program.

“I loved it,” he said. “I had my own room, and I had some new clothes and I was doing pretty good.” But something went wrong: “I drifted back on drugs. I don’t think I’d do that no more if I get another chance. Somebody must have said some kind of magic word that means evil to me and I didn’t take it for the right thing.”

* On May 21, the state Department of Health and Rehabilitative Services announced plans to phase out South Florida State Hospital over three years. Bringing the 36-year-old institution up to acceptable standards would cost about \$20 million, HRS concluded, and the \$82,000 annual cost of caring for one patient there could be cut to about \$34,000 if patients were treated in their own communities through programs such as Phoenix. “We would have ended up with the best horse and buggy money could buy,” HRS spokesmen said, and the horse-and-buggy metaphor for an outdated mental hospital fast became the official line.

Lt. Gov. and acting HRS Secretary Buddy MacKay used it in the Broward County Commission Chambers on June 17, when a standing-room-only crowd appeared for a legislative task-force hearing on the hospital closing. “We don’t want the best horse and buggy in town,” MacKay said, and assured the crowd that the decision to close was not made for fear of losing the upcoming federal suit, but solely on the best interests of the patients.

Don’t worry, MacKay said, the hospital will not close until adequate local services are in place

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and paid for. And then, for the next three hours, relatives, advocates, mental patients and hospital employees stepped to the microphone one by one and said basically the same thing: We don't believe you. As Pattie Hunt, a Jupiter mother whose son has been in the hospital six years, put it: "A horse and buggy looks pretty good to somebody on the street that can't get help!" In a strange way, part of Merdis Moore is relieved to have her son in jail.

"I'm glad he's in jail because there wasn't no place I had for him to go at the time," she says, "and that's bad. I didn't want him on the streets because I know there's nothing but death and destruction out there, especially for him." On Sept. 7, a day before the federal lawsuit against South Florida State Hospital was to be heard in Miami, lawyers for HRS and the Advocacy Center reached an agreement that avoids a trial and sets strict guidelines for discharging patients. Under the 24-page settlement, the state must provide community support programs if the hospital closes, or pay for improvements if it doesn't.

At about the same time, the six-member legislative task force recommended that South Florida State Hospital remain open, with A.G. Holley Hospital in Lantana perhaps expanding to accept Palm Beach County patients and a smaller facility placed in Dade or Monroe counties for patients from the southern area. South Florida State Hospital is being under-used and local services either don't exist or can't absorb all the patients if it closes. And, the report concluded, getting South Florida State Hospital accredited should be a goal. But the hospital's fate remains with the full Legislature, which has yet to act.

"I won't vote to close it," vowed state Rep. Carol Hanson, a Boca Raton Republican. "Over my dead body. I don't know if it's going to be more economically feasible to build a new facility, but there's got to be something in place. We can't walk away and turn our backs while we continue to build aquariums and theaters for the performing arts." At 8:45 a.m. on the same day the suit was settled, Dennis Moore was taken from the jail for a status hearing in Room 315 of the Palm Beach County Courthouse. Fifteen years had passed since Judge Edward Rodgers complained about the system's endlessly revolving door.

Merdis Moore sat alone in one of the spectator benches when her son filed into the courtroom, chained to 10 or 12 other prisoners. From a seat in the jurors' box, he sometimes waved to strangers entering the room. When Moore's name was called, Assistant Public Defender **Iola Mosley** gestured for him to remain seated while she approached the microphone to tell the judge that psychiatric evaluations were not complete. In less than five minutes, Moore was being led back to jail. "I'd like to get him into a Phoenix program as quickly as possible," **Mosley** reassured Mrs. Moore. "I'm working to get him back into the mental health system because it's been my experience that when they're kept in jail, they just deteriorate."

Dennis Lee Moore's trial on the robbery at Kentucky Fried Chicken is set for Thursday morning. He will appear before Circuit Judge Edward Rodgers.

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Iola Thomas Mosley
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Miami Herald, The(FL)
July 30, 1991

RAPE CHARGES FILED AGAIN AGAINST TEEN'S STEP-FATHER

Author: *LORI ROZSA Herald Staff Writer*

A videotape of a man once charged with sexually assaulting his 13-year-old step-daughter that shows him lifting heavy bags and having lively conversations helped convince prosecutors to refile the rape charges -- after they were dropped because the man was deemed incompetent to stand trial. Assistant State Attorney Doug Fulton said Monday the man is once again charged with two counts of sexual activity with a child, the same charges he faced in 1988 after his step-daughter told police he assaulted her. She became pregnant and later miscarried. The Herald is not printing the man's name to protect the girl's identity.

Fulton dropped the original charges against the man because medical experts said he was incompetent, and he had convinced doctors and other observers that he was barely able to speak or sit up in a chair.

Fulton said the man appeared to be in horrible physical shape, and when the girl's mother pushed for dismissal of the charges, Fulton agreed to drop them in May 1990. But a year later, a civil court judge found that the man's claim of "organic brain syndrome" arising from a work-related injury six months before he was charged with rape was a sham. Judge Lisa Campbell denied the man's workman's compensation claim after watching a videotape presented by attorney Neal Ganon.

The tape shows the man driving, lifting a 50-pound bag of dog food, and having animated conversations with people.

"In court, he kept his eyes down, his arm was bent up in a fetal-like position, you could hardly get a word out of him without him looking like he was in pain," Ganon said. "And here he is smiling, with easy, joyful expressions. He's even driving."

Iola Mosely, the public defender who represented the man in the original charges, said she hasn't seen the videotape. "Just because a person can lift something does not mean he is mentally competent or able to understand the charges that are pending against him," Mosely said. Fulton said the step-daughter had gone to live with her natural father.

Research compiled by : Amanda Kuhl
 Colin Baenziger & Associates

City Commission Special Meeting, 1:30 pm

Meeting Date: 03/10/2016

Re:

Information

SUBJECT:

Discussion, ranking and selection of City Attorney.

Form Review

Form Started By: Linda Cox

Started On: 03/08/2016 11:55 AM

Final Approval Date: 03/08/2016