

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D12-4325

SHERYL STECKLER, in her Official
capacity as Inspector General of
Palm Beach County, Florida,

Appellant,

vs.

TOWN OF GULF STREAM, VILLAGE OF
TEQUESTA, CITY OF RIVIERA BEACH, TOWN
OF JUPITER, CITY OF DELRAY BEACH,
TOWN OF PALM BEACH SHORES, TOWN OF
MANALAPAN, TOWN OF MAGNONIA PARK,
CITY OF PALM BEACH GARDENS, TOWN OF
HIGHLAND BEACH, TOWN OF LAKE PARK,
CITY OF WEST PALM BEACH, TOWN OF OCEAN
RIDGE, CITY OF BOCA RATON, municipal
Corporations of the State of Florida,
PALM BEACH COUNTY, a political subdivision,
And SHARON R. BOCK, in her Official capacity
as the Clerk & Comptroller of Palm Beach
County, Florida,

Appellees.

Inspector General's Motion to Expedite Appeal

Sheryl Steckler, in her official capacity as Inspector
General of Palm Beach County, by and through her undersigned
counsel, pursuant to Rule 9.300, Florida Rules of Appellate
Procedure, files this, her Motion to Expedite Appeal, and
states:

1. This is an appeal of a circuit court Order (Exhibit A)
denying the Inspector General's Motion to Intervene (Exhibit B)
in the case below. The Order is a final order as to the

Inspector General. *Khilena Adhin v. First Horizon*, 44 So. 3d 1245, 1249 (Fla 5th DCA 2010).

2. Addressing this Order is an urgent matter because as explained in detail below:

a. The Order appears to nullify the Inspector General's (IG's) ability to enforce the Inspector General Ordinance, a key component of the County's ethics reform and the result of a public referendum enacted for the public welfare, and

b. The Order effectively prevents the IG from addressing in circuit court the ongoing failure of the parties to comply with their legal obligations relating to the funding of the Office of Inspector General (OIG). As admitted by the Board of County Commissioners (BOCC) in its original Counterclaim (Exhibit C, pp. 50-51) and amended Counterclaim (Exhibit D, pp. 61-62) in the case below, the ongoing underfunding of the OIG is damaging the County. But the real victim is the public and its welfare.

"This Court is always willing to expedite appeals where the justice of the cause requires it." *Muniz v. Muniz*, 789 So. 2d 370, 373 footnote 2 (Fla. 3rd DCA 2001).

3. In the aftermath of a number of public corruption convictions of county and municipal elected officials, on May 1, 2009, a Palm Beach County grand jury issued a presentment in which they urged a number of significant ethics/public

corruption reforms. (Exhibit E) One key recommendation was the establishment of an independent Inspector General:

"The grand jury finds that a fundamental need exists for an entity within the Palm Beach County governmental structure with meaningful independence from the governing body to be an effective 'watchdog' for the citizens of Palm Beach County. The need for effective oversight of county government is real and change is necessary." (p. 81)

4. In November 2010, an "ethics reform" package, which included the requirement of an independent Inspector General, was submitted to the citizens of Palm Beach County and approved by 72% of the voters.

5. The reform package is now incorporated into Article VIII of the County Charter and titled "Ethics Regulation." There are three main components: the creation of a Palm Beach County Code of Ethics; the creation of an independent Commission on Ethics to enforce the Code of Ethics; and the creation of an independent Inspector General and Office of Inspector General "to provide independent oversight of publicly funded transactions, projects, and other local government operations." (Exhibit F, p. 88)

6. Because the Inspector General cannot provide effective oversight of government operations without access to information (records and testimony), the County's Implementing Ordinance (the IG Ordinance, Exhibit G, pp. 91-101) imposes on officials and employees of the county and municipal governments, and on

contractors, subcontractors, and lower tier subcontractors of these governments the obligation to:

"fully cooperate with the inspector general in the exercise of the inspector general's functions, authority and powers. Such cooperation shall include, but not be limited to providing statements, documents, records and other information, during the course of an investigation, audit or review. The inspector general may obtain sworn statements, in accordance with Florida Statutes, of all persons identified in this subsection as well as other witnesses relevant to an investigation, audit or review."

Section 2-423(1) (p. 92)

7. In addition, in order to both insure the independence of the Inspector General and provide for an appropriate level of OIG resources, the Charter and Ordinance establish a minimum level of funding for the OIG. (pp. 88-89, 98-100) In compliance with these requirements in September, 2011 the Palm Beach Board of County Commissioners (hereinafter "BOCC") adopted the OIG's annual budget for the fiscal year beginning on October 1, 2011. That budget was to be funded 45% (\$1.263 million) by the municipalities and 55% (\$1.536 million) by the BOCC.

8. The Ordinance's requirements are mandatory, not voluntary. The Ordinance provides the Inspector General specific enforcement powers:

a. "The inspector general may exercise any of the powers contained in this article upon his or her own initiative." Section 2-423(7) (p. 93);

b. "This article is enforceable by all means provided by law, including seeking injunctive relief in the

Fifteenth Judicial Circuit Court in and for Palm Beach County." Section 2-431 (p. 101); and

c. If any person fails to comply with a subpoena issued by the Inspector General "the inspector general may make application to any circuit court of this state" Section 2-423(3) (p. 93)

9. The lower court's Order denying the Inspector General's Motion to Intervene did not provide the basis or rationale for its decision. However, only two arguments were advanced by opposing counsel for denying intervention;

a. That the Inspector General lacked standing (sufficient interest in the subject to warrant the court considering her views); and

b. That the Inspector General lacked the capacity to sue (the right to even appear in court as a party).

10. As a result, the lower court's Order denying the Motion to Intervene casts doubt on the Inspector General's capacity to sue. Without the capacity to sue, the Inspector General's enforcement authority provided in the Ordinance is nullified, compliance with the Ordinance becomes purely voluntary, and the public welfare is undermined. Besides violating the specific language in the IG Ordinance cited above, such a ruling would: be precedential in the entire history of Florida jurisprudence; violate fundamental Constitutional due process requirements; and undermine the overwhelming public vote to require an "independent" Inspector General to oversee

governmental operations in Palm Beach County, thereby ignoring the fundamental premise in Article I, section 1 of the Florida Constitution that: "All political power is inherent in the people."

10. The lower court's Order also impedes the ability of the Inspector General to address the ongoing failure to comply with the law as to OIG funding. Specifically:

a. The circuit court case involves a challenge by the 14 municipal Appellees to both the requirement that they contribute to the OIG's funding and to the processes for determining the level of Inspector General funding.

b. Since the case was filed in November, 2011, the 14 municipalities have refused to pay their required shares of the OIG's funding.

c. The Clerk and Comptroller (the Clerk), also an Appellee here and Intervenor below, then refused to bill any of the county's municipalities (including the 24 not suing) for OIG funding, and has further refused to allow any funds from any municipality to be spent by the OIG.

d. This produced significant underfunding of the OIG, which the BOCC, Appellee here and Defendant below, admitted in its Counterclaim is resulting in "diminished oversight of its (the County's) vendors," thereby damaging the County. In

actuality, the IG is most directly harmed by this underfunding and the public is the ultimate victim.

e. Despite this admission in its Counterclaim, the BOCC and County Attorney refused to file any pleading intended to address the problem. Instead, it requested a monetary award for its own "damages" whenever the lawsuit concluded.

f. The case below was "abated" from December 2011 until June, 2012, so the parties could engage dispute resolution proceedings under chapter 164. In June, 2012, after negotiations failed, the IG filed her Motion to Intervene. At that time she specifically intended to address the ongoing failure to fund the OIG, and thereby halt the resulting public injury, and attached pleadings to do so (pp. 11-41) to her Motion to Intervene which she proposed to file as soon as intervention was granted.

g. It took an inordinate amount of time for the Motion to Intervene to be heard. The first hearing, scheduled for July 6, 2012, was cancelled on July 5 by the first assigned judge, who determined that she had an unspecified conflict. The hearing was next set for September 14, 2012, but was cancelled the week before hearing by the next assigned circuit judge. The Motion was finally heard on October 24, but the Order denying intervention, which effectively prevents IG from addressing the underfunding in circuit court, was not rendered until November

19, 2012. The ongoing underfunding of the OIG is in violation of both the Charter and the IG Ordinance, is causing ongoing harm to the public welfare, and should be addressed without further delay.

h. In order to address the underfunding without further delay and halt the public injury, the Inspector General is filing in this Court, concurrent with this motion, a Petition for Writ(s) of Mandamus. But granting the requested relief is likely to require a determination that the Inspector General has both standing and the capacity to sue, thereby expressly or implicitly reversing the Order on appeal.

11. The Order on appeal was solely the result of legal arguments which the parties have been advancing since June, 2012. All parties should be able to reiterate their arguments on an expedited basis. No dispute of material facts relating to the Motion to Intervene was raised before the trial court. Because this involves pure questions of law, the standard of review is de novo. *Khilena Adhin v. First Horizon*, 44 So. 3d 1245, 1249 (Fla 5th DCA 2010).

12. Due to the foregoing, the Inspector General respectfully suggests that no formal record be required from the circuit court clerk, and that the Court allow each of the parties to provide records with appendices as is undertaken in nonfinal and specified final appeals pursuant to Florida Rule of

Appellate Procedure 9.130, and that the Court set an expedited briefing schedule which could allow as little as one week for both the initial brief and answer, and three business days for the reply.

WHEREFORE, the Inspector General respectfully requests that this Honorable Court grant this Motion, dispense with the requirement of a formal record from the circuit clerk, issue an expedited procedural schedule for this appeal, and consider and rule on the appeal on an expedited basis.

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing Inspector General's Motion to Expedite Appeal has been provided by e-mail this 14th day of December, 2012, to those on the attached service list.

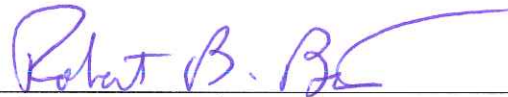


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Certificate of Font Compliance

I HEREBY CERTIFY that the size and style of type in this Inspector General's Motion to Expedite Appeal is 12-point Courier New, in compliance with Fla. R. App. P. 9.210 (a) (2).

Respectfully submitted,



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