

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA,
FOURTH DISTRICT**

CASE NO. 4D12-4325

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

Appellant,

V.

**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.

APPENDIX

**VOLUME 2
R180-R326**

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 50 2011 CA 017953

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, VILLAGE OF WELLINGTON,
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,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

INSPECTOR GENERAL'S MOTION TO INTERVENE

SHERYL STECKLER, in her official capacity as Inspector General of Palm Beach
County ("Inspector General"), by and through her undersigned counsel, and in accordance with
Rule 1.230, Florida Rules of Civil Procedure, files this Motion for entry of an Order allowing her
to intervene in this proceeding and to have a status that is not subordinate to the other parties in

this proceeding, or with as few restrictions as this Court deems just and appropriate. In support of this Motion, the Inspector General states:

1. Rule of Civil Procedure 1.230, Interventions, provides:

“Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.”

2. As asserted in the Clerk and Comptroller’s Motion to Intervene which was granted by this Court, in Florida intervention should be liberally granted. See, *National Wildlife Fed, Inc. v. Glisson*, 531 So. 2d 996, 998 (Fla. 1988).
3. As will be addressed below, the Inspector General is the public official most likely to be directly and seriously impacted by this litigation, but was neither named as a party nor served.

Independence of the Inspector General

4. The Inspector General is a county officer mandated in Article VIII, Section 8.3 of the Charter of Palm Beach County.
5. The Inspector General is independent of the plaintiff Municipalities.
6. The Inspector General is also independent in all material respects of the defendant County Board of County Commissioners (BOCC):
 - a. The Inspector General is not chosen by the BOCC, but by an “Inspector General Committee,” comprised of the State Attorney, the Public Defender, and all five members of the independent Palm Beach County Commission on Ethics.

- b. The Inspector General is not an “at will” employee of the BOCC. She has a four year employment contract and, as specified in the Charter and Inspector General Ordinance, she may only be removed “for cause.” And removal “for cause” can only be accomplished by a “supermajority” of *both* the BOCC and the Inspector General Committee.
 - c. Article VIII, Section 8.3 of the Charter of Palm Beach County specifies that the minimum funding level (the “Funding Base”) of the Office of Inspector General (OIG) shall be “one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General,” and that the BOCC may not establish a lower budget for the OIG unless so requested by the Inspector General.
 - d. The Inspector General hires and fires her own staff, without approval from the BOCC.
7. The Inspector General has “full and unrestricted access” to the records of all County and Municipal officials and employees. She can also require any official or employee to submit to questioning and provide sworn statements.
 8. The Inspector General determines which matters she will investigate, audit, or inquire into without approval from the BOCC or the Municipalities.
 9. The Inspector General is the sole determiner of the contents of her reports.
 10. The Inspector General is the sole determiner of which matters she will refer to other agencies.
 11. Reports issued by the Inspector General are public records and are accessible to the public on the internet and through other means.

12. In essence, the Inspector General reports to the citizens.
13. The County Attorney, who directly reports to the BOCC, has repeatedly refused to disclose her litigation strategy to, or discuss it with, the OIG, due to the “functional independence” of the Inspector General.

Impact of this Matter on the Inspector General

14. The plaintiff Municipalities are challenging provisions in the County Charter and the Inspector General Ordinance relating to the funding of the OIG, including the constitutionality of certain provisions.
15. Furthermore, the plaintiff Municipalities have generally refused to remit payment as required by the both the County Charter and Ordinance, thereby impeding the operation of the Office of Inspector General.
16. As a result of this legal action, the Clerk and Comptroller has elected not to perform her duties as required by the Ordinance, which are comprised of calculating the respective funds owed by each entity, sending out quarterly invoices, and depositing the funds received (which the Clerk characterizes as her “collection” duties). The Clerk has also elected not to permit the expenditure of any funds received from any municipality to fund the Office of Inspector General, even funds remitted under the Ordinance by any of the 24 municipalities which are not parties to the lawsuit.
17. The ballot language approved on November 2, 2010, by the voters of Palm Beach County and each municipality regarding the Inspector General asked:

Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: an independent Inspector General *funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?* (Emphasis supplied.)

18. The ballot language clearly stated that each entity must provide a share of the funding for the OIG. Nevertheless, the plaintiff Municipalities argue that, for a variety of reasons, they have no responsibility to provide such funding. They also maintain in paragraph 2. of their complaint that: "For the funding of the Inspector General Program to be lawful, the County must fund it in its entirety."
19. In essence, the plaintiff Municipalities are arguing that the BOCC is solely responsible for providing the minimum funding specified by the Charter; i.e., "one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General."
20. In contrast, the County Attorney (on behalf of the BOCC) implies in her Counterclaim that if the Municipalities do not pay their "share" of the OIG's funding, then the OIG will not be funded at the minimum level required in the Charter.
21. The positions taken by, and actions of, the parties to this proceeding constitute an attack on various provisions of the County Charter and the viability of the OIG. They place in jeopardy the OIG's funding and budget and impede the Inspector General's ability to plan activities, recruit staff, and generally perform her duties.
22. In its counterclaim the defendant BOCC recognizes the direct and serious impact this has had on the OIG, as the BOCC requests an award of damages from the plaintiff Municipalities due to "the OIG's diminished ability to oversee County vendors and County operations... [as a result of] the Municipalities refus[al] to properly fund the OIG."

Legal Standard

23. In *Union Central Life Insurance Co. v. Carlisle*, 593 So. 2d 505, at 507 and 508 (Fla. 1992), the Supreme Court of Florida explained the required legal analysis for intervention:

“First, the trial court must determine that the interest asserted is appropriate to support intervention. *See Morgareidge*. Once the trial court determines that the requisite interest exists, it must exercise its sound discretion to determine whether to permit intervention. In deciding this question the court should consider a number of factors, including the derivation of the interest, any pertinent contractual language, the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance.

Second, the court must determine the parameters of the intervention. As the drafters of rule 1.230 noted:

Under this rule, the court has full control over intervention, including the extent thereof; although intervention under the rule is classified as of right, there must be an application made to the court, and the court in its discretion, considering the time of application as well as other factors, may deny the intervention or allow it upon conditions’

30 Fla. Stat. Ann. 352 Authors' Comment--1967 (1985) (emphasis added). Thus, intervention should be limited to the extent necessary to protect the interests of all parties.”

24. Even if this dispute were confined to the issue of whether the BOCC and the Municipalities should all contribute to the “funding base” of the OIG, or whether the BOCC has sole responsibility to provide that minimum level of funding, the Inspector General would have an unquestionable interest in this matter and would meet the legal standard for intervention.

25. However, because an issue has arisen as to whether the Charter requirement establishing the OIG’s minimum “funding base” must be honored by anyone, the

Inspector General respectfully asserts that she is a “necessary” or “indispensible” party to this proceeding.

26. Florida appellate courts will void a judgment entered in a case if a necessary party has not been included. See, *Yorty v. Abreu*, 988 So. 2d 1155 (3rd DCA 2008); *Green v. Hood*, 98 So. 2d 488 (Fla. 1957).
27. As an additional point, it is respectfully asserted that under the above facts, the Inspector General could now file a new action against certain parties regarding issues directly relating to this dispute. That action would likely be consolidated with the instant case and the Inspector General, as unrestricted plaintiff in the new case, would have an unsubordinated status. Permitting intervention here in an unsubordinated capacity would best serve the interests of justice and judicial economy.
28. Allowing the Inspector General to enter this proceeding at this time will not prejudice the parties. Although this case was filed in November, 2011, for most of this period the litigation has been “in abeyance” at the request of the parties so they could engage in dispute resolution procedures (ultimately fruitless) under Chapter 164. Therefore, little or no litigation has occurred since the case was filed. See, *Beeler v. Banco Industrial de Venezuela*, 834 So. 2d 952 at 953 (3rd DCA 2003).
29. Finally, the Inspector General respectfully suggests that it may not best serve the interests of justice to permit this matter to be litigated solely by parties who may not have the same desire as their citizens for oversight by the Inspector General. Because the voters chose to have an Inspector General oversee the operations of these governmental entities, and because she reports directly to the citizens, the Inspector General respectfully suggests that she is the party best situated to defend the interests

of the voters who approved the ballot question and enacted the Charter provision requiring her oversight over all of the plaintiffs and the defendant.

WHEREFORE, the Inspector General respectfully requests that this Court enter an Order finding her a necessary party and allowing her to intervene in an unsubordinated capacity, or allowing intervention with as few restrictions as this Court deems just and appropriate, including authorization to file the specific pleadings attached hereto as the following Exhibits:

1. Inspector General's Motion to Dismiss Clerk's and Comptroller's Amended Complaint in Intervention, Cross-Claim, and Counterclaim for Declaratory and Other Relief.
2. Inspector General's Crossclaim For Issuance of Writ of Mandamus to the Clerk.
3. Inspector General's Motion to Dismiss Municipalities' Complaint for Declaratory Relief.
4. Inspector General's Crossclaim for Issuance of Writ of Mandamus to Plaintiff Municipalities.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and U.S. Mail this 7th day of June, 2012, to those on the attached service list.



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EXHIBIT 1

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 50 2011 CA 017953

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, VILLAGE OF WELLINGTON,
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,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

**INSPECTOR GENERAL'S MOTION TO DISMISS CLERK AND
COMPTROLLER'S AMENDED COMPLAINT IN INTERVENTION, CROSS-
CLAIM, AND COUNTERCLAIM FOR DECLARATORY AND OTHER RELIEF**

Intervenor Sheryl Steckler, in her official capacity as Inspector General of Palm
Beach County (the "Inspector General"), by and through her undersigned counsel,
pursuant to Rule 1.100 Florida Rules of Civil Procedure, files this Motion to Dismiss the

Clerk and Comptroller's (the "Clerk's") Amended Complaint in Intervention, Cross Claim, and Counterclaim for Declaratory and Other Relief, and states:

1. The Clerk's Amended Complaint in Intervention, Cross Claim, and Counterclaim for Declaratory and Other Relief, filed on or about December 15, 2011, claims that she:

"is uncertain whether she should take any of the following actions which are required by the Funding Mechanism in the ordinance, or may be required for the Clerk & Comptroller to comply with her constitutional, statutory and other duties:

- a. Prepare allocation schedules for the County and the Municipalities based on the most current LOGER system data for future quarters in FY 2012 and beyond, adjusted for revenues from sources other than the County and Municipalities and funds estimated to be received but not expended by the IG;
- b. Send Past due Notices to the Municipalities that have not yet paid their invoices or take other enforcement actions;
- c. Invoice the Municipalities for their proportionate share of the financial support budgeted by the County for the IG for future quarters in FY 2012 and beyond;
- d. Deposit in the IG Account any funds received in response to invoices mailed to the Municipalities for their proportionate share of the financial support budgeted by the County for the IG for FY 2011 and 2012;
- e. Return any funds deposited in the IG Account received in response to invoices mailed to the Municipalities for their proportionate share of the financial support budgeted by the County for the IG for FY 2011 and 2012, or prevent use of such funds pending resolution of this lawsuit; and
- f. Attest to checks or warrants drawn on the IG Account, sign any warrant for the payment of any claim or pay any County funds in excess of those deposited in the IG Account by any source other than the Municipalities, and affix the corporate seal thereto."

2. As an independent officer of the County, the Clerk is required to proceed on the presumption that a duly enacted Ordinance, which she is required to in whole or in part administer, is lawful:

- a. "A regularly enacted ordinance will be presumed to be valid until the contrary is shown..." *State v. Ehinger*, 46 So. 2d 601 (Fla. 1950); *Seaboard Air Line Railroad Company v. Hawes*, 269 So. 2d 392 (4th DCA 1972).

- b. "State officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise." (citations omitted) *Department of Education v. Lewis*, 416 So. 2d 455, at 458 (Fla. 1982).
3. As is material hereto, the Clerk's prayer for relief requests that *if the Court determines that the Funding Mechanism in the Ordinance is unlawful*, the Court then declare whether the Clerk should:
 - "a. permanently cease any further collection efforts (including without limitation preparing allocation schedules, invoicing, collecting, and depositing funds received into the IG Account) pursuant to the Ordinance with respect to any of the Municipalities;
 - b. return all funds paid by Municipalities pursuant to the Ordinance that have been segregated and maintained pending the resolution of this Lawsuit;
 - c. refrain from processing or attesting to any payments from the IG Account with respect to funds budgeted to be received from the Municipalities pursuant to the Ordinance; and
 - d. otherwise perform her duties with respect to the IG account in accordance with the remaining provisions of the Ordinance and constitutional, statutory and other duties imposed on the Clerk & Comptroller under applicable law;"
4. However, in the cover letter from counsel to the Clerk to the County Attorney, dated November 22, 2011 (Attached as Exhibit A) which accompanied delivery of her original Motion to Intervene and Complaint in Intervention for Declaratory and Other Relief, the Clerk advised the BOCC that *prior to* receiving direction from this Court, she would:
 - "1. Discontinue further collection efforts pursuant to the Ordinance;
 2. Segregate all funds paid by Municipalities pursuant to the ordinance; and
 3. Discontinue processing payments from the IG Account, once County funds are exhausted."
5. The Clerk has since implemented this.
6. Because the Clerk has elected not to perform her duties under the Inspector General Ordinance and other laws, her Complaint in this case must be dismissed:

“In Florida, the general rule is that a public official may not seek a declaratory judgment as to the nature of his duties unless he ‘is willing to perform his duties, but is prevented from doing so by others.’ *Reid v. Kirk*, 257 So.2d 3, 4 (Fla. 1972); see [*3] *Department of Revenue v. Markham*, 396 So.2d 1120, 1121 (Fla. 1981). The validity of the law is to be assumed by the public official who is to carry it out. By the same token, that official does not have standing to sue for the purpose of determining that the law is not valid. *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982); *Miller v. Higgs*, 468 So.2d 371, 374 (Fla. 1st DCA 1985). The foregoing principles are equally applicable when a public official questions the validity of a regulation or rule because a valid rule or regulation of an administrative agency has the force and effect of law. See *Florida Livestock Board v. Gladden*, 76 So. 2d 291, 293 (Fla. 1954); *Bystrom v. Equitable Life Assurance Society*, 416 So.2d 1133, 1142 n.9 (Fla. 3d DCA 1982), *rev. denied*, 429 So.2d 5 (Fla. 1983); see also *Markham*, 396 So.2d 1120 (court held property appraisers lacked standing to contest Department of Revenue regulations). Because Commissioner Swift has not been prevented from performing his duties under the Florida Administrative Code and because those rules are to be presumed valid, declaratory judgment is inappropriate.” *Graham v. Swift*, 480 So. 2d 124 (3rd DCA 1985)

In *Graham*, supra,, the Third District Court remanded the case back to the trial court with instructions to dismiss Commissioner Swift’s Declaratory Judgment action.

7. Although the Clerk maintains that “she has been prevented, in part, from performing her collection duties as prescribed in the Funding Mechanism in the ordinance by all Municipalities, which have refused to make payment as required by the Ordinance,” this does not justify her actions:
 - a. Only a minority of Municipalities have failed to make payment.
 - b. The fact that some municipalities have failed to pay has not “prevented” the Clerk from performing her ministerial responsibilities under the Ordinance, which consist of calculating the respective funds owed by each entity, sending out quarterly invoices, and depositing the funds received.
 - c. Even assuming for the sake of argument that the Clerk truly had been “prevented” from performing some duties, that would not justify her refusal to

perform her other duties relating to the OIG. For example, the majority of Municipalities were voluntarily paying their "shares" of the IG funding as required by the Ordinance. However, rather than presuming the Ordinance to be valid until the contrary has been determined by this Court, the Clerk refuses to allow those funds to be spent by the OIG.

WHEREFORE, the intervenor Inspector General respectfully requests that this Court enter an Order Dismissing the Clerk and Comptroller's Amended Complaint in Intervention, Cross-Claim, and Counterclaim for Declaratory and Other Relief.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and U.S. Mail this 7th day of June, 2012, to those on the attached service list.



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November 22, 2011

VIA HAND DELIVERY AND REGULAR MAIL

Denise M. Nieman
County Attorney
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Dear Ms. Nieman:

Our firm represents Clerk & Comptroller Sharon R. Bock in her official capacity. On or about November 14, 2011, fifteen Palm Beach County municipalities filed a lawsuit (the "Lawsuit") to declare unlawful the funding mechanism for the Office of Inspector General (the "IG"), contained in Section 3 of Ordinance No. 2011-009 (codified at Art. XII, § 2-429, County Code) (the "Ordinance"). The Ordinance requires Palm Beach County ("the County") and each of its municipalities (the "Municipalities") to offer financial support to the IG.

The Clerk & Comptroller deposits funds collected pursuant to the Ordinance in the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund (the "IG Account"), which is a County depository under the custody and control of the Clerk & Comptroller pursuant to Article V, section 16 and Article VIII, section 1(d) of the Florida Constitution. When the IG requests payment from the IG Account, the Clerk & Comptroller performs her constitutional and statutory audit responsibilities and, if proper, issues payment.

In the Lawsuit, certain Municipalities assert that the funding mechanism for the IG constitutes an unlawful tax upon their residents. Because the legality of the funding mechanism is in question, the Clerk & Comptroller is uncertain as to how to carry out her duties and responsibilities.

The Clerk & Comptroller has constitutional and statutory duties and responsibilities to protect the public's funds and to ensure that they are received and spent lawfully. If the Court determines the funding mechanism under the current Ordinance is unlawful, then any use of the funds collected from any Municipality and deposited in the IG Account also would be unlawful. In that case, the Clerk & Comptroller may not issue payment from funds not lawfully available for expenditures of the IG. In addition, the Clerk & Comptroller may be held personally liable for any funds improperly collected or expended.

Furthermore, the Clerk & Comptroller calculates that there will be a FY 2012 funding shortfall of approximately \$1.6 million in the IG Account, which represents the Municipalities' share of the

Denise M. Nieman
November 22, 2011
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County-approved IG budget. As a neutral third party, the Clerk & Comptroller takes no position on the merits of the Lawsuit, but seeks to intervene in the pending action for the purpose of seeking declaratory relief concerning, inter alia, the following:

1. The funds the Clerk & Comptroller has already collected or may hereafter receive from the Municipalities;
2. The funds received from the Municipalities that the IG may request from the IG Account;
3. The shortfall in the IG Account; and
4. The Clerk & Comptroller's continuing duties under the Ordinance.

A copy of the Motion to Intervene and Complaint for Declaratory Relief being filed on behalf of the Clerk & Comptroller is attached for your information.

Until the Clerk & Comptroller receives direction from the Court, the Clerk & Comptroller will:

1. Discontinue further collection efforts pursuant to the Ordinance;
2. Segregate all funds paid by Municipalities pursuant to the Ordinance; and
3. Discontinue processing payments from the IG Account, once County funds are exhausted.

The Clerk & Comptroller will seek appropriate interim direction and relief from the Court during the pendency of the Lawsuit regarding these matters, unless the Board of County Commissioners commits to do the following:

1. Fund any budget deficit in the IG Account resulting from nonpayment by the Municipalities; and
2. Reimburse the Clerk & Comptroller for any funds received from Municipalities used to pay IG expenditures.

If the Board of County Commissioners takes these actions to ensure sufficient funding of the IG, the Clerk & Comptroller will permit the expenditure of current budgeted funds beyond the County's proportionate share. If such actions are not taken, there will be insufficient funds to cover the IG's FY 2012 budget and the Clerk & Comptroller will be statutorily prohibited from expending funds beyond the County's proportionate share.

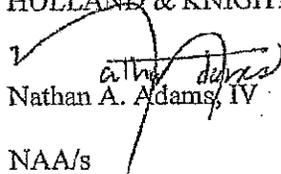
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Denise M. Nieman
November 22, 2011
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Please call me with any questions or comments that you may have.

Sincerely,

HOLLAND & KNIGHT LLP


Nathan A. Adams, IV

NAA/s

Enclosures

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State Attorney
Attorney General
Martin Alexander

000198

EXHIBIT 2

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 50 2011 CA 017953

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, VILLAGE OF WELLINGTON,
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,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

**INSPECTOR GENERAL'S CROSSCLAIM FOR ISSUANCE OF WRIT OF
MANDAMUS TO CLERK**

Intervenor SHERYL STECKLER, in her official capacity as Inspector General of Palm
Beach County, by and through her undersigned counsel, pursuant to Rules 1.170 and 1.630,
Florida Rules of Civil Procedure, files this Crossclaim for Issuance of a Writ of Mandamus to

Sharon Bock, in her official capacity as Clerk & Comptroller of Palm Beach County (the "Clerk"), and states:

1. This Crossclaim is a complaint for the issuance of Writ of Mandamus to the Clerk.

Jurisdiction and Venue

1. This Court has jurisdiction to grant the relief requested herein, the issuance of a Writ of Mandamus, pursuant to Article V, Section 5(b) of the Constitution of the State of Florida, section 26.012, Florida Statutes, and Rule 1.630 of the Florida Rules of Civil Procedure.
2. Venue is proper in Palm Beach County pursuant to section 47.011, Florida Statutes because all parties are located in Palm Beach County and the cause of action accrued here.

Parties

3. The Clerk is an independent constitutional officer of Palm Beach County (County).
4. The Inspector General is an officer of Palm Beach County who in all material respects is independent of the Palm Beach County Board of County Commissioners (BOCC).

Office of Inspector General

5. In November 2010, a ballot question asked the voters of this County (as regards the Inspector General):

"Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?"

Over 72% of the voters of Palm Beach County, and a majority in each of its 38 municipalities, voted their approval.

6. As a result of this election, the Inspector General position is mandated in Article VIII, Section 8.3 of the Charter of Palm Beach County.
7. The Charter also specifies that the minimum funding level (the "Funding Base") of the Office of Inspector General (OIG) shall be:

"one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General."
8. Under the Charter, the funding provided to the OIG in any given year may only be less than 0.25% if the Inspector General so requests, which occurred for the current fiscal year.
9. Per the results of this election, the Inspector General has oversight responsibilities over both the County agencies and all municipal governments within Palm Beach County.
10. As required by the Charter, the BOCC adopted an Ordinance (the Inspector General Ordinance) to implement these requirements. Section 2-422 specifies:

"Sec. 2-422. - Office created and established.

There is hereby established the office of inspector general which is created in order to promote economy, efficiency, and effectiveness in the administration of and, as its priority, to prevent and detect fraud and abuse in programs and operations administered or financed by the county or municipal agencies. The inspector general shall initiate, conduct, supervise and coordinate investigations designed to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct, and other abuses by elected and appointed county and municipal officials and employees, county and municipal agencies and instrumentalities, contractors, their subcontractors and lower tier subcontractors, and other parties doing business with the county or a municipality and/or receiving county or municipal funds. The inspector general shall head the office of inspector general. The organization and administration of the office of inspector general shall be independent to assure that no interference or influence external to the office of inspector general adversely affects the independence and objectivity of the inspector general."

11. The Inspector General reports her findings directly to the entity involved and to the public.

12. Per the requirements of the ballot question approved by the voters, the County's resulting Inspector General Ordinance requires that funding for the OIG be provided by both the County and all municipalities subject to her jurisdiction. See sections 2-429 and 2-429.1 of the Inspector General Ordinance.
13. The Inspector General Ordinance assigns the Clerk only limited duties. Specifically, the Ordinance requires the Clerk to:
 - a. Prepare allocation schedules to determine the County's and each municipality's proportionate share of the OIG budget.
 - b. Invoice the County and municipalities quarterly for their respective shares.
 - c. Deposit funds received into the Inspector General Special Revenue Fund.
14. As detailed in both the Clerk's Motion to Intervene and Complaint in Intervention, the Clerk, as constitutional and statutory clerk, auditor, and custodian of county funds has additional duties relating to the OIG which are similar to her duties for other County entities. Specifically and as is relevant here, she must sign warrants for the payment of legitimate and legal expenses incurred by the OIG.
15. The Clerk's specific responsibilities in paragraphs 13 and 14 above are ministerial in nature.
16. The underlying lawsuit in this case was filed by 15 of the County's 38 municipalities, challenging their obligation to share the cost of funding the OIG. One has since dismissed its claim and there are currently 14 plaintiff municipalities.

Conduct of the Clerk

17. As is material hereto, the Clerk's prayer for relief in both her original Complaint (filed on or about November 22, 2011) and her Amended Complaint (filed on or about December

22, 2011), requests that *if the Court determines that the Funding Mechanism in the Ordinance is unlawful*, the Court then declare whether the Clerk should:

- a. permanently cease any further collection efforts (including without limitation preparing allocation schedules, invoicing, collecting, and depositing funds received into the IG Account) pursuant to the Ordinance with respect to any of the Municipalities;
- b. return all funds paid by Municipalities pursuant to the Ordinance that have been segregated and maintained pending the resolution of this Lawsuit;
- c. refrain from processing or attesting to any payments from the IG Account with respect to funds budgeted to be received from the Municipalities pursuant to the Ordinance; and
- d. otherwise perform her duties with respect to the IG account in accordance with the remaining provisions of the Ordinance and constitutional, statutory and other duties imposed on the Clerk & Comptroller under applicable law;”

18. However, in the cover letter from counsel to the Clerk to the County Attorney, dated November 22, 2011 (Attached as Exhibit A), which accompanied delivery of her original Motion to Intervene and Complaint in Intervention for Declaratory and Other Relief, the Clerk advised the BOCC that *prior to* receiving direction from this Court she would:

- “1. Discontinue further collection efforts pursuant to the Ordinance;
2. Segregate all funds paid by Municipalities pursuant to the ordinance; and
3. Discontinue processing payments from the IG Account, once County funds are exhausted.”

19. The Clerk has since implemented this, including prohibiting the expenditure of Inspector General funds received under the Ordinance from all municipalities, including those which are not participating in the lawsuit.

20. The Clerk’s *sole* justification is that, if the Court determines the funding mechanism to be unlawful, then the expenditure of funds remitted by municipalities under the Ordinance would also be illegal and the Clerk could be personally responsible for these funds pursuant to section 129.09, Florida Statutes, which provides:

“County auditor not to sign illegal warrants.—Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or

indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be personally liable for such amount, and if he or she shall sign such warrant willfully and knowingly he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.”

21. During the current fiscal year, as a direct result of being deprived of municipal funding, the Office of inspector General did not receive full allocation of funds required under the Charter and Ordinance and approved by the BOCC. As a result, the OIG’s ability to plan activities, recruit staff, and generally perform her duties was impeded and her office, as well as the County, the paying municipalities and the public sustained unquantifiable damages.

Legal Argument

22. As an independent officer of the County, the Clerk is required to proceed on the presumption that a duly enacted Ordinance, which she is required to in whole or in part administer, is lawful:
- a. “A regularly enacted ordinance will be presumed to be valid until the contrary is shown...” *State v. Ehinger*, 46 So. 2d 601 (Fla. 1950); *Seaboard Air Line Railroad Company v. Hawes*, 269 So. 2d 392 (4th DCA 1972).
 - b. “State officers and agencies must presume legislation affecting their duties to be valid...” (citations omitted) *Department of Education v. Lewis*, 416 So. 2d 455, at 458 (Fla. 1982).
23. Mandamus requires that the petitioner establish both a clear legal right to have a public officer perform a ministerial duty, and that there are no other legal remedies available.

“In Order for a court to issue a writ of mandamus, a petitioner ‘must show that he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him.’ *Hatten v. State*, 561 So. 2d 562, 563 (Fla. 1990).” *Holcomb v. Department of Corrections*, 609 So. 2d 751 (1st DCA 1992).

24. In the instant case, the Inspector General has a clear legal right to have the Clerk perform her ministerial duties under both the County's Inspector General Ordinance and Florida Statutes. The Clerk has no authority to cease performing her duties merely because a statute has been challenged. She must assume that the Charter and Ordinance are valid, and faithfully perform her duties until and unless a Court advises her to cease doing so or strikes the provisions being challenged. An obvious parallel would be if the Florida Department of Revenue were to cease collecting all sales taxes throughout the state, thereby disabling state government, merely because someone in Jacksonville filed a legal challenge to Florida's sales tax laws.

25. The County, in its counterclaim, recognizes that the failure to fund the OIG at the level required by both the Charter and Ordinance will result in "substantially less comprehensive" oversight by the OIG, and will also result in damages to the County. However, the Inspector General respectfully maintains that there is no real legal remedy for this underfunding. The Inspector General has responsibility to "promote economy, efficiency, and effectiveness in the administration of and, as its priority, to prevent and detect fraud and abuse in programs and operations administered or financed by the county or municipal agencies." Less will be accomplished if funding is not provided. What is not discovered due to lack of resources is unlikely to ever be known, and cannot be quantified and valued for a subsequent award of monetary damages. Moreover, the uncertainty over the status of the Inspector General's funding created in part, by the actions of the Clerk, has impeded the Inspector General's recruiting efforts and her operation in general. These issues, too, cannot be quantified or assigned a monetary

value. Similarly, the County, the municipalities which are not parties to this lawsuit, and the general public have no adequate remedy at law.

26. The Inspector General also disputes the Clerk's sole excuse for refusing to perform her ministerial duties, that she will become personally liable under section 129.09, Florida Statutes, which provides that a Clerk shall be personally liable for payment "...in excess of the expenditure allowed by law, or county ordinance..." if at some future time this Court declares the Ordinance's current Funding Mechanism to be defective.

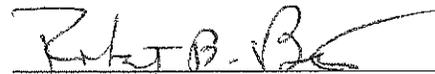
- a. There is no good faith argument that can be advanced as to why the Clerk would be personally liable under this law for performing her ministerial duties which involve: preparing allocation schedules to determine the County's and each municipality's proportionate share of the OIG budget; invoicing the County and municipalities quarterly for their respective shares; and depositing funds received into the Inspector General Special Revenue Fund. None of these duties can be claimed to constitute making expenditures.
- b. As to allowing the expenditure of funds remitted by municipalities, it is respectfully submitted that, irrespective of who this Court ultimately determines must provide funding to support the OIG, that decision will not make previous expenditures by the OIG "illegal." The Inspector General's expenditures will have remained within the minimum budget mandated for her in the County Charter. So the Clerk cannot be personally liable under section 129.09, Florida Statutes.
- c. Moreover, even if this Court were to ultimately strike the Funding Methodology in the current Ordinance, until that occurs Florida law requires the Clerk to

presume the current Ordinance (and Methodology) are valid in all respects and faithfully perform her duties accordingly, and she cannot be liable under section 129.09, Florida Statutes, for doing so.

27. Finally, because the Clerk's sole reason for refusing to perform her duties is her fear of personal liability, the entry by this Court of a Writ of Mandamus directing her to perform those duties will eliminate any question of personal liability and clear the path for her to perform the duties she was elected and is being paid to perform.

WHEREFORE, the Inspector General respectfully requests that this Court issue a Writ of Mandamus directing that the Clerk timely perform her ministerial duties to prepare allocation schedules to determine the County's and each municipality's proportionate share of the OIG budget; invoice the County and municipalities quarterly for their respective shares; and deposit funds received into the Inspector General Special Revenue Fund, and that she cease segregating and prohibiting the expenditure of funds received from municipalities.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and U.S. Mail this 7th day of June, 2012, to those on the attached service list.



Robert B. Beitler
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NATHAN A. ADAMS, IV
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November 22, 2011

VIA HAND DELIVERY AND REGULAR MAIL

Denise M. Nieman
County Attorney
Palm Beach County
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

Dear Ms. Nieman:

Our firm represents Clerk & Comptroller Sharon R. Bock in her official capacity. On or about November 14, 2011, fifteen Palm Beach County municipalities filed a lawsuit (the "Lawsuit") to declare unlawful the funding mechanism for the Office of Inspector General (the "IG"), contained in Section 3 of Ordinance No. 2011-009 (codified at Art. XII, § 2-429, County Code) (the "Ordinance"). The Ordinance requires Palm Beach County ("the County") and each of its municipalities (the "Municipalities") to offer financial support to the IG.

The Clerk & Comptroller deposits funds collected pursuant to the Ordinance in the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund (the "IG Account"), which is a County depository under the custody and control of the Clerk & Comptroller pursuant to Article V, section 16 and Article VIII, section 1(d) of the Florida Constitution. When the IG requests payment from the IG Account, the Clerk & Comptroller performs her constitutional and statutory audit responsibilities and, if proper, issues payment.

In the Lawsuit, certain Municipalities assert that the funding mechanism for the IG constitutes an unlawful tax upon their residents. Because the legality of the funding mechanism is in question, the Clerk & Comptroller is uncertain as to how to carry out her duties and responsibilities.

The Clerk & Comptroller has constitutional and statutory duties and responsibilities to protect the public's funds and to ensure that they are received and spent lawfully. If the Court determines the funding mechanism under the current Ordinance is unlawful, then any use of the funds collected from any Municipality and deposited in the IG Account also would be unlawful. In that case, the Clerk & Comptroller may not issue payment from funds not lawfully available for expenditures of the IG. In addition, the Clerk & Comptroller may be held personally liable for any funds improperly collected or expended.

Furthermore, the Clerk & Comptroller calculates that there will be a FY 2012 funding shortfall of approximately \$1.6 million in the IG Account, which represents the Municipalities' share of the

Denise M. Nieman
November 22, 2011
Page 2

County-approved IG budget. As a neutral third party, the Clerk & Comptroller takes no position on the merits of the Lawsuit, but seeks to intervene in the pending action for the purpose of seeking declaratory relief concerning, inter alia, the following:

1. The funds the Clerk & Comptroller has already collected or may hereafter receive from the Municipalities;
2. The funds received from the Municipalities that the IG may request from the IG Account;
3. The shortfall in the IG Account; and
4. The Clerk & Comptroller's continuing duties under the Ordinance.

A copy of the Motion to Intervene and Complaint for Declaratory Relief being filed on behalf of the Clerk & Comptroller is attached for your information.

Until the Clerk & Comptroller receives direction from the Court, the Clerk & Comptroller will:

1. Discontinue further collection efforts pursuant to the Ordinance;
2. Segregate all funds paid by Municipalities pursuant to the Ordinance; and
3. Discontinue processing payments from the IG Account, once County funds are exhausted.

The Clerk & Comptroller will seek appropriate interim direction and relief from the Court during the pendency of the Lawsuit regarding these matters, unless the Board of County Commissioners commits to do the following:

1. Fund any budget deficit in the IG Account resulting from nonpayment by the Municipalities; and
2. Reimburse the Clerk & Comptroller for any funds received from Municipalities used to pay IG expenditures.

If the Board of County Commissioners takes these actions to ensure sufficient funding of the IG, the Clerk & Comptroller will permit the expenditure of current budgeted funds beyond the County's proportionate share. If such actions are not taken, there will be insufficient funds to cover the IG's FY 2012 budget and the Clerk & Comptroller will be statutorily prohibited from expending funds beyond the County's proportionate share.

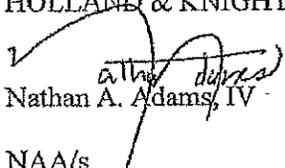
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Denise M. Nieman
November 22, 2011
Page 3

Please call me with any questions or comments that you may have.

Sincerely,

HOLLAND & KNIGHT LLP


Nathan A. Adams, IV

NAA/s

Enclosures

cc: Sharon R. Bock, Esq., Clerk & Comptroller, Palm Beach County
Denise Coffman, Clerk & Comptroller Legal Counsel
Palm Beach County Board of County Commissioners
All Palm Beach County municipalities
Inspector General of Palm Beach County
State Attorney
Attorney General
Martin Alexander

000210

EXHIBIT 3

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 50 2011 CA 017953

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, VILLAGE OF WELLINGTON,
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,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

**INSPECTOR GENERAL'S MOTION TO DISMISS MUNICIPALITIES' COMPLAINT
FOR DECLARATORY RELIEF**

Intervenor SHERYL STECKLER, in her official capacity as Inspector General of
Palm Beach County (the "Inspector General"), by and through her undersigned counsel,

pursuant to Rule 1.100 Florida Rules of Civil procedure, files this Motion to Dismiss the Municipalities' Complaint for Declaratory Relief (the "Complaint"):

1. The Municipalities' Complaint challenges the validity of provisions within the County's Charter and Inspector General Ordinance relating to the funding of the Office of Inspector General. Specifically, the plaintiffs allege that the challenged provisions violate provisions in Florida's Constitution and statutes relating to their "home rule" and their authority to adopt budgets.
2. In their prayer relief, the plaintiffs request:

"...that this Court enter a judgment declaring that:

 - a. The Municipalities shall not be required to pay the expenses of the Inspector General Program;
 - b. Any and all expenses relating to the Inspector General Program shall be paid for solely by the County;
 - c. Any efforts by the County to require the Municipalities to appropriate funds to pay for the expenses of the Inspector General Program are unlawful and unenforceable;
 - d. Section 8.3 of the Charter and subsequent Implementing Ordinance are unconstitutional as they are in conflict with the powers and duties granted to the Municipalities under the Florida Constitution and Chapter 166, Florida Statutes;
 - e. Section 8.3 of the Charter and subsequent Implementing ordinance are unconstitutional as they are in conflict with the budgeting powers granted to the Municipalities pursuant to Chapter 166.0241, Florida Statutes; and
 - f. The Municipalities are awarded their costs incurred in the prosecution of this action and are granted such other and further relief as deemed just and proper under the circumstances."
3. As to each plaintiff Municipality, the filing of this Complaint was at the instance of the elected commission or council (officials and officers) of the respective municipality.

4. Under Florida law, elected officials and other officers are required to proceed on the presumption that a duly enacted Ordinance, which they are required to in whole or in part administer, is lawful:
 - a. "A regularly enacted ordinance will be presumed to be valid until the contrary is shown..." *State v. Ehinger*, 46 So. 2d 601 (Fla. 1950); *Seaboard Air Line Railroad Company v. Hawes*, 269 So. 2d 392 (4th DCA 1972).
 - b. "State officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise." (citations omitted) *Department of Education v. Lewis*, 416 So. 2d 455, at 458 (Fla. 1982).
5. Included in this requirement is the obligation to comply with the provisions they are challenging, which in this case are the obligations set forth in the Charter and Ordinance requiring the Municipalities to pay their quarterly share of the funding of the Office of Inspector General.
6. With only limited exception, the plaintiff Municipalities have refused and failed to comply with this obligation to pay their share of the funding of the Office of Inspector General.
7. Because the plaintiff Municipalities have refused to comply with their duties under the County Charter and the Inspector General Ordinance, their Complaint must be dismissed:

"In Florida, the general rule is that a public official may not seek a declaratory judgment as to the nature of his duties unless he 'is willing to perform his duties, but is prevented from doing so by others.' *Reid v. Kirk*, 257 So.2d 3, 4 (Fla. 1972); see *Department of Revenue v. Markham*, 396 So.2d 1120, 1121 (Fla. 1981). The validity of the law is to be assumed by the public official who is to carry it out. By the same token, that official does not have standing to sue for the purpose of determining that the law is not valid. *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982); *Miller v. Higgs*, 468 So.2d 371, 374 (Fla. 1st DCA 1985). The foregoing principles are equally applicable when a public official questions the validity of a regulation or rule because a valid rule or regulation of an administrative agency has the force and effect of law. See *Florida*

Livestock Board v. Gladden, 76 So. 2d 291, 293 (Fla. 1954); *Bystrom v. Equitable Life Assurance Society*, 416 So.2d 1133, 1142 n.9 (Fla. 3d DCA 1982), *rev. denied*, 429 So.2d 5 (Fla. 1983); *see also Markham*, 396 So.2d 1120 (court held property appraisers lacked standing to contest Department of Revenue regulations). Because Commissioner Swift has not been prevented from performing his duties under the Florida Administrative Code and because those rules are to be presumed valid, declaratory judgment is inappropriate.” *Graham v. Swift*, 480 So. 2d 124,125 (3rd DCA 1985)

In *Graham*, *supra*, the Third District Court remanded the case back to the trial court with directions to dismiss Swift’s Declaratory Judgment complaint.

WHEREFORE, the intervenor Inspector General respectfully requests that this Court enter an Order dismissing the plaintiff Municipalities’ Complaint for Declaratory Relief.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and U.S. Mail this 7th day of June, 2012, to those on the attached service list.



Robert B. Beitler
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EXHIBIT 4

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 50 2011 CA 017953

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, VILLAGE OF WELLINGTON,
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,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

**INSPECTOR GENERAL'S CROSSCLAIM FOR ISSUANCE OF WRIT OF
MANDAMUS TO PLAINTIFF MUNICIPALITIES**

Intervenor SHERYL STECKLER, in her official capacity as Inspector General of Palm
Beach County, by and through her undersigned counsel, pursuant to Rules 1.170 and 1.630,

Florida Rules of Civil Procedure, files this Crossclaim for Issuance of a Writ of Mandamus to all of the plaintiff Municipalities and states:

Jurisdiction and Venue

1. This Court has jurisdiction to grant the relief requested herein, the issuance of a Writ of Mandamus, pursuant to Article V, Section 5(b) of the Constitution of the State of Florida, section 26.012, Florida Statutes, and Rule 1.630 of the Florida Rules of Civil Procedure.
2. Venue is proper in Palm Beach County pursuant to section 47.011, Florida Statutes because all parties are located in Palm Beach County and the cause of action accrued here.

Parties

3. Each of the plaintiff Municipalities is a political subdivision of the state, and each is located within Palm Beach County.
4. The Inspector General is an officer of Palm Beach County mandated in the County Charter who in all material respects is independent of the Palm Beach County Board of County Commissioners (BOCC).

General Background

5. On November 2, 2010, a ballot question asked the voters of this County (as regards the Inspector General):

“Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?”

Over 72% of the voters of Palm Beach County, and a majority in each of its 38 municipalities, voted their approval.

6. The Charter also specifies that the minimum funding level (the "Funding Base") of the Office of Inspector General (OIG) shall be:

"one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General."
7. Under the Charter, the funding provided to the OIG in any given year may only be less than 0.25% if the Inspector General so requests.
8. Following that election, and as required in the resulting Charter provision, an Ordinance Drafting Committee was appointed to draft an amended Inspector General Ordinance to implement the Charter's requirements relating to the Inspector General, including the requirement in the ballot language that the Inspector General be funded by "all government entities subject to" her authority.
9. As also required by the Charter, the Ordinance Drafting Committee (Drafting Committee) consisted of seven members; three representatives of the municipalities; three representatives of the County; and the Inspector General.
10. At the April 6, 2011 meeting of the Drafting Committee, the city managers from two municipalities which participated in the filing of this legal action, Delray Beach and Wellington (Wellington has since dropped out of the suit), requested financial relief. Specifically, they advised the Drafting Committee that because they were required to establish their budgets for the then current fiscal year (October 1, 2010 through September 30, 2011) prior to October 1, their budgets for that year did not include any moneys to fund the OIG for that fiscal year.
11. After considering this request, the Drafting Committee ultimately agreed to recommend to the BOCC that the final Inspector General Ordinance permit the municipalities to remit their respective shares of the OIG's funding for the balance of the 2010-2011 fiscal year

(the period from June 1 to September 30) during the next fiscal year, along with their scheduled quarterly payments for the then current year.

12. The amended (current) Inspector General Ordinance was adopted by the BOCC in May, 2011, to be effective on June 1, 2011. It requires that funding for the OIG be provided by both the County and by all municipalities subject to her jurisdiction. It requires each entity to pay one quarter of its annual share in quarterly installments each year. It also provides for the payment during fiscal year 2011-2012 of the amounts due from each municipality for the previous fiscal year. See sections 2-429 and 2-429.1 of the Inspector General Ordinance.
13. The Inspector General's jurisdiction and duties relating to the county's municipalities commenced on June 1, 2011.
14. As also required by the Ordinance, on October 10, 2011, the Clerk and Comptroller sent each municipality an invoice for one quarter of their proportionate shares of the funding of the OIG for the 2011-2012 fiscal year, and an invoice for their proportionate shares of the funding of the OIG for the previous fiscal year.
15. On November 14, 2011, the plaintiff Municipalities filed the instant case.
16. Despite the fact that the plaintiff Municipalities have each accepted the jurisdiction and services of the Inspector General since June 1, 2011, with limited exception the plaintiff Municipalities have failed to pay the amounts due for their proportionate shares of the funding of the OIG. The plaintiff Municipalities have benefitted from the services of the Inspector General without contributed their share of the OIG funding.

Legal Argument

17. Each of the plaintiff Municipalities' is directed by officers who are required to proceed on the presumption that a duly enacted Ordinance which affects their duties is lawful:

- a. "A regularly enacted ordinance will be presumed to be valid until the contrary is shown..." *State v. Ehinger*, 46 So. 2d 601 (Fla. 1950); *Seaboard Air Line Railroad Company v. Hawes*, 269 So. 2d 392 (4th DCA 1972).
- b. "State officers and agencies must presume legislation affecting their duties to be valid..." (citations omitted) *Department of Education v. Lewis*, 416 So. 2d 455, at 458 (Fla. 1982).

18. Mandamus requires that the petitioner establish both a clear legal right to have a public officer perform a ministerial duty, and that there are no other legal remedies available.

"In Order for a court to issue a writ of mandamus, a petitioner 'must show that he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him.' *Hatten v. State*, 561 So. 2d 562, 563 (Fla. 1990)." *Holcomb v. Department of Corrections*, 609 So. 2d 751 (1st DCA 1992).

19. In the instant case, the Inspector General has a clear legal right to have the plaintiff Municipalities comply with the requirements of the Ordinance and remit their funding obligation in a timely manner. The officers of the plaintiff Municipalities have no authority to refrain from paying this obligation merely because they have challenged the Ordinance.

20. Payment of this funding obligation is a ministerial duty. The precise amount due from each municipality is the result of a definitive formula and factors set out in the Ordinance.

21. This obligation remains in effect until and unless a Court strikes the provisions being challenged.

22. The County, in its counterclaim, recognizes that the failure to fund the OIG at the level required by both the Charter and Ordinance will result in “substantially less comprehensive” oversight by the OIG, and will also result in damages to the County. However, the Inspector General respectfully maintains that there is no real legal remedy for this underfunding. The Inspector General has responsibility to “promote economy, efficiency, and effectiveness in the administration of and, as its priority, to prevent and detect fraud and abuse in programs and operations administered or financed by the county or municipal agencies.” Less will be accomplished if funding is not provided. What is not discovered due to lack of resources is unlikely to ever be known, and cannot be quantified and valued for a subsequent award of monetary damages. Moreover, the uncertainty over the status of the Inspector General’s funding created in part, by the actions of the Clerk, has impeded the Inspector General’s recruiting efforts and her operation in general. These issues, too, cannot be quantified or assigned a monetary value.
23. Similarly the County, the municipalities which are not parties to this lawsuit, and the general public have no adequate remedy at law.

WHEREFORE, the Inspector General respectfully requests that this Court issue a Writ of Mandamus directing that each of the plaintiff Municipalities timely perform their ministerial duties to pay their respective shares of the OIG funding until and unless this Court finds the Charter and Ordinance provisions requiring such payments to be unlawful and therefore ineffective.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and
U.S. Mail this 7th day of June, 2012, to those on the attached service list.



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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 50 2011 CA 017953

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, VILLAGE OF WELLINGTON,
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,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

NOTICE OF HEARING

PLEASE BE ADVISED that SHERYL STECKLER, in her official capacity as Inspector
General of Palm Beach County, will call on for hearing the Inspector General's Motion to
Intervene in the above case, before The Honorable Sandra K. McSorley, Circuit Court Judge, on

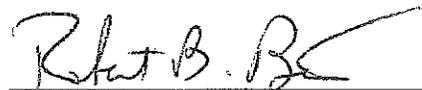
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Friday, July 6, 2012, at 4:00 p.m. in Courtroom 10C, the Main Judicial Complex, 205 N. Dixie,

West Palm Beach, Florida. Thirty minutes have been reserved.

PLEASE GOVERN YOURSELF ACCORDINGLY.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and
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000226

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

TOWN OF GULF STREAM, et al.,

CASE NO. 502011CA017953XXXMB

Plaintiffs,

DIVISION: AN

v.

PALM BEACH COUNTY,

Defendant.

SHARON R. BOCK, in her Official Capacity
as the Clerk and Comptroller of Palm Beach
County, Florida,

Intervenor.

RECEIVED COPY FOR FILING
JUN 15 2012
SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

MOTION TO LIFT ABATEMENT

COMES NOW, the Defendant, Palm Beach County, by and through its undersigned Assistant County Attorney, and files this Motion to Lift the Abatement in this case, and in support thereof, states the following:

1. This is a dispute between governmental entities in Palm Beach County.
2. As such, the parties are required to engage in the statutory procedures for dispute resolution pursuant to Chapter 164, Florida Statute (2010), known as the Florida Governmental Conflict Resolution Act (the "Act"), prior to litigating the outstanding issues in court.
3. The Act requires that all judicial proceedings be stayed so the governmental entities can pursue the dispute resolution procedure set forth therein.

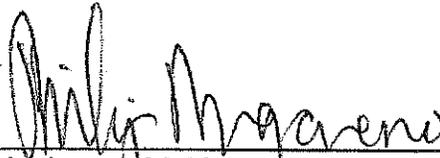
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4. The parties have in good faith completed the dispute resolution process and now seek to lift the abatement in this case.

WHEREFORE, the Defendant, Palm Beach County, respectfully requests that this Court enter an Order Lifting the Abatement in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing has been provided by U.S. Mail and E-Mail this 15th day of June, 2012, to those on the attached service list.



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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

TOWN OF GULF STREAM, et al.,

CASE NO. 502011CA017953XXXXMB

Plaintiffs,

DIVISION: AN

v.

PALM BEACH COUNTY,

Defendant.

SHARON R. BOCK, in her Official Capacity
as the Clerk and Comptroller of Palm Beach
County, Florida,

Intervenor.

AGREED ORDER LIFTING ABATEMENT

THIS CAUSE having come before the court upon Defendant, Palm Beach County's Motion to Lift Abatement, and the Court being advised of the agreement of the parties, it is hereby,

DONE AND ORDERED that the abatement in the case is lifted for all purposes and the case shall proceed accordingly.

DONE AND ORDERED in Chambers this _____ day of June, 2012, at West Palm Beach, Palm Beach County, Florida.

SIGNED & DATED

JUN 19 2012

JUDGE SANDRA K. MCSORLEY

Honorable Sandra K. McSorley
Circuit Court Judge

*Copies furnished to all parties
on the attached service list.*

000232

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA
CASE NO.: 50 2011 CA 017953 AN

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, VILLAGE OF WELLINGTON
TOWN OF MANGONIA 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,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official Capacity as the
Clerk & Comptroller of Palm Beach County, Florida

Intervenor.

RESPONSE TO INSPECTOR GENERAL'S MOTION TO INTERVENE

Sharon R. Bock, in her official capacity as Clerk & Comptroller of Palm Beach County (the "Clerk and Comptroller"), by and through her undersigned counsel, and in accordance with Rule 1.230, Florida Rules of Civil Procedure, files this Response to the Inspector General's Motion to Intervene, incorporating the arguments of the County and Municipalities, and states:

INTRODUCTION

The Clerk & Comptroller is an intervenor in this action by Agreed Order with standing to participate as an elected constitutional officer under Article V, section 16 and Article VIII,

000237

section 1(d) of the Florida Constitution, required by statute and common law to serve as the custodian, keeper, accountant, auditor, inspector and examiner of all County accounts including those funds deposited in the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund (the "IG Account"). See §§ 28.12, 129.09, 136.08, Fla. Stat. The Clerk & Comptroller is required to attest to every check or warrant drawn on County accounts including the IG Account and may be liable for willfully and knowingly signing a warrant for a charge not authorized by law. §§ 129.09, 136.06, Fla. Stat.

The Clerk & Comptroller takes no position on the merits of this litigation. She solicits declaratory relief as to whether her compliance with the financial support and budgeting requirements set forth in Article XII, § 2-429, County Code, is consistent with her constitutional, statutory and other duties. The Clerk & Comptroller has accepted this lawsuit as she found it and raised only those issues incident to the underlying claims and counterclaim of the parties. The parties hoped to resolve this dispute, but now that they are forging ahead with the litigation the Clerk & Comptroller is working diligently with the County to determine how to handle funds with the approval of this Court received from municipalities not party to this lawsuit.¹

ARGUMENT

In November 2010, the electors of Palm Beach County established the Office of Inspector General by Charter amendment and later by County Ordinance. Charter § 8.3; Ord. No. 2009-049, as amended by 2011-009 ("Ordinance"). It is an office respected by the Clerk & Comptroller and the parties to this litigation; however, the Charter, Ordinance and common law are clear that the IG lacks standing to intervene in this case. Charter, § 4.3 ("The office of county

¹ These funds constitute a fraction of the IG's budget and of the sums owed by the Plaintiffs if the Ordinance is constitutional. Meanwhile, the Inspector General has more than sufficient funds to operate her department in the ordinary course for several months to come.

attorney shall prosecute and defend all civil actions for and on behalf of Palm Beach County and the Board of County Commissioners...."); Art. XII, § 2-429(7), County Code ("In the event payment is not timely received [on an invoice for financial support of the IG], the county or any municipality in compliance with this section may pursue any available legal remedy.");² *North Miami Bch. Water Bd. v. Gollin*, 171 So. 2d 584, 585-86 (Fla. 3d DCA 1965) (where city was authorized to create, by ordinance, a separate department to manage, control and operate water department, and water board was to be appointed by city council, water board was a subservient department within municipality and had no standing to become a party defendant in proceedings brought against city; denying North Miami Beach Water Board's motion to intervene for lack of standing); *Florida City Police Dep't v. Corcoran*, 661 So. 2d 409 (Fla. 3d DCA 1995) (police department was not an entity subject to suit).

The electors of Palm Beach County and the County itself conferred upon the IG limited powers excluding the right to defend this action. Charter § 4.3. The Charter is the constitution of Palm Beach County. This Court's main purpose is to construe the constitution in such a manner as to ascertain the intent of the framers and to effectuate that object. *Metro-Dade Fire Rescue Serv. Dist v. Metro-Dade Cnty.*, 616 So. 2d 966, 968 (Fla. 1993). The implementing ordinance for the IG may not contradict the charter. *Id.* at 970. In this case, all speak in unison: the Charter confers on the County Attorney the authority to defend civil actions while granting the Inspector General ("IG") no such legal authority, Charter §§ 4.3, 8.3; and the Ordinance explicitly states the County shall pursue any legal remedy in the event the IG is not funded. Art. XII, § 2-429(7), County Code. Other than the Charter, there is no other constitutional or

² The electors of Palm Beach County knew how to authorize the Inspector General to pursue legal remedies, but decided against it. *See* Art. XII, s. 2-423(3), County Code (authorizing the Inspector General to make application to any circuit court of the state which shall have jurisdiction to order a witness to appear before the Inspector General and to produce evidence in the case of a refusal to obey a subpoena).

statutory authority upon which this Court may rely to grant the IG's motion to intervene.³ Consequently, the IG lacks substantive capacity or standing to exercise any procedural right to intervene. *Gollin*, 171 So. 2d at 585-86; Rule 1.230, Fla. R. Civ. P.

In addition, the IG is not entitled to the special treatment she seeks incompatible with traditional intervenor status. Intervenors ordinarily cannot do what the IG demands: to dismiss pleadings (contrary to the County's legal posture), to dismiss Plaintiffs, to dismiss the Clerk & Comptroller, and to raise new albeit erroneous legal issues tertiary to the underlying dispute. See *Fla. Gas. Co. v. Am. Emp'rs' Ins. Co.*, 218 So. 2d 197 (Fla. 3d DCA 1969) (affirming denial of intervenor's motion to dismiss for failure to state a claim on grounds intervenor was bound by record at time of intervention); *Krouse v. Palmer*, 131 Fla. 444, 179 So. 762, 763 (1938) (affirming interpretation of motion to dismiss by intervenors as the equivalent of a motion to dismiss intervenors as parties defendants). The IG erroneously raises as new issues tertiary questions including the Clerk & Comptroller's constitutional and statutory standing,⁴ as well as the Clerk & Comptroller's exercise of her statutory responsibilities. "A trial court does not abuse its discretion when it denies intervention because the would-be intervenor seeks to inject new issues into the pending action." *Allstate Ins. Co. v. Johnson*, 483 So. 2d 524, 525 (Fla. 5th DCA

³ The authority to establish a municipality or quasi-municipal entity such as an independent special district is exclusively the Legislature's. *Bd. of Comm'rs of Jupiter Inlet Dist. v. Thibadeau*, 956 So. 2d 529, 532 (Fla. 4th DCA 2007). The County may establish a dependent special district, Ch. 189, Fla. Stat., but the electors of Palm Beach County did not choose to establish the IG in this fashion.

⁴ A comptroller may challenge a law that requires the expenditure of public funds as it is the comptroller's duty to collect, control and disburse them. See, e.g., *Green v. City of Pensacola*, 108 So. 2d 897, 900-01 (Fla. 1st DCA 1959) (comptroller entitled to question constitutionality of special act which purports to exempt the City of Pensacola from payment of gross receipts tax as required by general law); accord *Kaulakis v. Boyd*, 138 So. 2d 505 (Fla. 1962) (county commissioners had the right and duty to challenge the validity of a portion of their home rule charter, which purported to make the county liable in tort to the same extent as municipalities since a judgment for the plaintiff would have required the commissioners to expend public funds in satisfaction thereof). Public officials also have standing to challenge a law that will injure them. *Green*, 108 So. 2d at 900.

1986).⁵ Consequently, and for the reasons discussed in the County's and City's responses, this Court should deny the IG's Motion to Intervene.

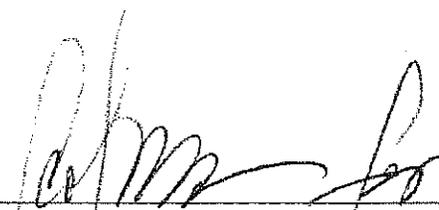
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I HEREBY CERTIFY that on this the 28th day of June 2012, a true and correct copy of the foregoing has been furnished by email and U. S. Mail to counsel as follows:

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⁵ Assuming *arguendo* the IG had any standing to intervene, it would be lesser by virtue of the IG's dependence on Charter and Ordinance than the standing of a constitutional and statutory officer's; nevertheless, the IG aims for greater standing for the purpose, *inter alia*, of overturning the constitutional officer's. The incongruity of the IG's position is self-evident.

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Board of County
Commissioners

Shelley Vana, Chair

Steven L. Abrams, Vice Chairman

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Priscilla A. Taylor

County Administrator

Robert Weisman

An Equal Opportunity
Affirmative Action Employer

June 28, 2012

Via Hand Delivery

The Honorable Sandra K. McSorley
Palm Beach County Courthouse
205 North Dixie Highway, Room 10.1216
West Palm Beach, FL 33401

RE: Town of Gulfstream, et al. v. Palm Beach County
Case No.: 502011CA017953XXXXMB(AN)

Dear Judge McSorley:

Please find enclosed Palm Beach County's Hearing Notebook containing the County's Response to the Inspector General's Motion to Intervene that is specially set for hearing on Friday, July 6, 2012 at 4:00 p.m. The Notebook includes the pertinent legal authority cited in order, supporting the County's position, string citations are omitted.

Additionally, should the Court desire more in depth background, the Plaintiff's Complaint and County's Answer, Affirmative Defenses and Counterclaim are also included herein.

If I can be of any further assistance, I will be at the Court's disposal.
Thank you.

Very truly yours,

Philip Mugavero, Esq.
Assistant County Attorney

PM:aa
encls.

cc: Denise Nieman, County Attorney
Andrew J. McMahon, Chief Assistant County Attorney
All Counsel of Record (PBC's Response only)

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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

TOWN OF GULF STREAM, et al.,

CASE NO. 502011CA017953XXXXMB

Plaintiffs,

DIVISION: AN

v.

PALM BEACH COUNTY, a political
Subdivision of the State of Florida,

Defendant.

SHARON R. BOCK, in her Official Capacity
as the Clerk and Comptroller of Palm Beach
County, Florida,

Intervenor.

**DEFENDANT, PALM BEACH COUNTY'S RESPONSE TO THE
INSPECTOR GENERAL'S MOTION TO INTERVENE**

COMES NOW, Defendant, Palm Beach County, a political subdivision of the State of Florida (hereinafter the "County"), and files its Response to the Inspector General's Motion to Intervene, and in support thereof, states the following:

I. Pertinent Background

The Inspector General's (hereinafter the "IG") Motion to Intervene was filed in this lawsuit between 15 municipalities (now 14, as the Village of Wellington withdrew) and the County, challenging the legality of County Ordinance No. 2011-009 (hereinafter "County Ordinance") which established the Palm Beach County Office of Inspector General. The funding methodology used to fund the IG is at the heart of the municipalities' challenge. In its Motion to Intervene, the IG considers itself "the public official most likely to be directly

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and seriously impacted by this litigation," because the IG is funded pursuant to the County Ordinance. The exhibits attached to the IG's Motion to Intervene are of no consequence whatsoever in determining this Motion to Intervene.

The Palm Beach County Clerk and Comptroller intervened in the lawsuit, by agreement of all parties, to obtain a judicial determination as to the extent of its responsibilities under the County Ordinance in light of the municipalities' challenge.

II. Summary

The IG's Motion to Intervene must be denied because: a) the IG has no legal capacity to sue or be sued in its own name or on behalf of the County to defend the legality of the County Ordinance; b) the IG has no standing to intervene in this lawsuit; and c) the IG cannot meet the legal requirements to intervene in this lawsuit.¹

III. Legal Argument

A. The IG has no legal capacity to sue or be sued in its own name or on behalf of the County to defend the legality of the County Ordinance.

The County Ordinance created the IG and contains the funding mechanism for the department. The IG is seeking to intervene in this lawsuit to protect the funding mechanism contained in the County Ordinance. In so doing, however, the IG will be defending the County Ordinance that contains the funding mechanism. This is exclusively the responsibility of the County Attorney's Office. The IG has no legal capacity to sue or be sued in its own name or to defend the County Ordinance.

¹ To the extent the Court agrees that the IG has no legal capacity to sue or be sued in its own name or on behalf of the County, the analysis as to the IG's ability to intervene ends with denial of the Motion. However, for completeness of the record, all points will be addressed in order.

The legal authority establishing the required legal capacity to sue is typically set forth in an enabling statute, but may also be created by the Constitution, special law, or County Charter. Larkin v. Buranosky, 973 So.2d 1286, 1287 (Fla. 4th DCA 2008) (requiring enabling statute to establish capacity to sue or be sued); Johnston v. Meredith, 840 So.2d 315 (Fla. 3rd DCA 2003) (recognizing that an enabling statute required to establish capacity to sue or be sued).

To the extent the County Ordinance can be misconstrued to be an enabling authority, each cited case allows the independent entity only such authority as specifically permitted in the enabling law. In this case, the County Ordinance does not authorize the IG to sue or be sued in its own name or on behalf of the County. The County Ordinance only gives the County and municipalities the authority to enforce payment under the County Ordinance. (See, ex. 1 at pg.8, lines 352-354.)

The IG is simply a department of the County with functional or investigative independence. This means that the IG operates independently of any restrictions or influence by the Palm Beach County Board of County Commissioners (hereinafter the "BCC"). (See, ex. 1, at pg. 1, lines 31-33.) The IG's independence does not as a matter of law give the IG the required legal capacity to sue or be sued in its own name or on behalf of the County to defend the legality of the County Ordinance. The IG has not cited any legal authority for this proposition. On the contrary, the Palm Beach County Charter, Florida Statutes and the County Ordinance do not support the IG's capacity to sue, be sued, or to undertake the legal defense of the County Ordinance. The County is solely responsible for the defense of the County Ordinance.

Florida law states in pertinent part:

The legislative and governing body of a County shall have the power to carry on County Government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to:

* * *

(b) Provide for the prosecution and defense of legal causes in behalf of the County or State and retain counsel and set their compensation.

Section 125.01(1)(b), Florida Statutes (2010) (emphasis added).

The BCC is the sole legislative and governing body authorized to act on behalf of the County and provide for the prosecution and defense of legal causes on behalf of the County and in this case, is properly defending the legality of the County Ordinance.

The County Charter specifically gives this authority solely to the County Attorney's Office, stating:

The office of county attorney shall be responsible for the representation of Palm Beach County, the Board of County Commissioners, the county administrator, and all other departments, divisions, regulatory boards and advisory boards of county government in all legal matters relating to their official responsibilities. **The office of county attorney shall prosecute and defend all civil actions for and on behalf of Palm Beach County and the Board of County Commissioners**, and shall review all ordinances, resolutions, contracts, bonds and other written instruments.

Palm Beach County Charter, January 2011, Section 4.3 (emphasis added).

The IG was created by the BCC pursuant to the County Ordinance. (See, ex. 1 at pg. 1, lines 21-33.) Nowhere in the County Ordinance is there an intention, express or implied, of the County to create an office of equal legal status to itself. In fact, any contracts or related agreements deemed necessary by the IG to carry out its specific functions are "subject to final approval of the BCC." (See, ex. 1, at pg. 2, lines 68-69.)

Even the Inspector General's employment contract itself is subject to final approval of the BCC. (See, ex. 1 at pg. 6, lines 246-248.) Finally, as stated earlier, the County Ordinance places the authority to enforce funding the IG with the County or paying municipalities, not the IG.

Therefore, the IG's Motion to Intervene must be denied for lack of capacity to sue or be sued in its own name or on behalf of the County. The issues of standing or the legal requirements to intervene need not be reached. However, as stated earlier, these issues will be addressed.

B. The IG has no standing to intervene in this lawsuit.

To the extent this issue needs to be reached by the Court, the IG asserts that it should be able to intervene in this lawsuit for a variety of reasons including: a) the IG "is the public official most likely to be directly and seriously impacted by this litigation"; b) the IG is the party best situated to defend the interests of the voters that sought IG oversight; and c) the IG is a necessary or indispensable party because its funding base as set forth in the County Ordinance is at stake.

The IG's Motion to Intervene puts the cart before the horse. The issue of whether the IG should be permitted to intervene must not even be reached unless the Court first determines that the IG has the capacity to sue or be sued in its own name or on behalf of the County, and then whether it has legal standing to intervene. The IG's Motion to Intervene is silent on the issue of its capacity to sue or be sued or its legal standing to intervene in this lawsuit. The Motion starts at step three, without addressing steps one and two.

Rule 1.230, Florida Rules of Civil Procedure, states in pertinent part that "[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention" There is no legal authority for the proposition that any County department whose funding base or budget may be affected by litigation will have an interest that confers standing.

As explained by the Fourth District Court of Appeal:

Standing depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the outcome of this litigation. The interest cannot be conjectural or merely hypothetical. **Furthermore, the claim should be brought by, or on behalf of, the real party in interest.** Standing encompasses not only this "sufficient stake" definition, but also the requirement that the claim be brought by or on behalf of one who is recognized in the law as a "real party in interest," that is the person in whom rests, by substantive law, the claim sought to be enforced.

Johansen, 898 So.2d at 1009, 1011 (Fla. 4th DCA 2005) (internal citations omitted) (emphasis added).

Further, a party must allege that he has suffered or will suffer a special injury. Wexler v. Lepore, 878 So.2d 1276, 1280 (Fla. 4th DCA 2004). See also, Alachua v. Sharps, 855 So.2d 195 (Fla. 1st DCA 2003) (generally, to have standing to bring an action the plaintiff must allege that he has suffered or will suffer a special injury). A special injury is an injury different in kind than those similarly situated. Jack Eckerd Corporation v. Michels Island Village Pharmacy, Inc., 322 So.2d 57 (Fla. 2nd DCA 1975).

Even assuming that the IG has alleged a sufficient stake in this litigation for the reasons asserted in its Motion to Intervene, the Motion must still be denied because: a) it does not have a legally cognizable interest recognized by substantive law to make it the

real party in interest; b) it is not the real party in interest in this litigation; and c) it cannot allege a special injury any different than any other County department that simply has an interest in the subject matter or outcome of the litigation.

No substantive law gives the IG the required legally cognizable interest in this litigation, nor is any such legal authority cited by the IG in its Motion to Intervene. Instead, all substantive law gives the County alone, not the IG, the legally cognizable interest in this litigation. Art. V, §1(g), Fla. Const.; Section 125.01, Florida Statutes (2010); Palm Beach County Charter, January 2011, Article I, Sec. 1.1.; Palm Beach County Ordinance No. 2011-009, pg. 8, lines 352-354. Therefore, it is the County, not the IG, that is the real party in interest under the law.

Finally, to the extent that the IG's funding base or budget can be considered a legally cognizable interest, the IG cannot allege any special injury separate and distinct from any other County department. No County department has a legally cognizable interest in its own budget, because litigation concerning one department's budget does not impact the BCC's discretion to amend its overall budget to shift the loss or budget shortfall from one department to another or revise the budget to cover any shortfall.

It is clear that the IG has no legal standing to intervene in this lawsuit and therefore, the IG's Motion to Intervene must be denied.

C. The IG has not met the legal requirements to intervene in this lawsuit.

To the extent the Court needs to reach this issue, the IG has not met the legal requirements to intervene in this lawsuit.

When deciding a Motion to Intervene, the Court goes through a two step analysis:

First, the trial court must determine that the interest asserted is **appropriate** to support intervention. Once the trial court determines that the requisite interest exists, it must exercise its sound discretion to determine whether to permit intervention. In deciding this question the court should consider a number of factors, including the derivation of the interest, any pertinent contractual language, the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance.

Second, the court must determine the parameters of the intervention. . . . Thus, intervention should be limited to the extent necessary to protect the interests of all parties.

Farese v. Palm Beach Partners, Ltd., 781 So.2d 419, 420-421 (Fla. 4th DCA 2001) (emphasis added) (quoting Union Central Life Insurance Co. v. Carlisle, 593 So.2d 505 (Fla. 1992)).

For the same reasons asserted in the rest of this Response, the IG's Motion to Intervene does not identify the appropriate interests that would allow its intervention in this lawsuit. As already argued, the IG does not have the capacity to sue or be sued in its own name. Furthermore, the County, with its own Ordinance to defend and its own budget to manage as a result of the litigation, is the real party in interest.

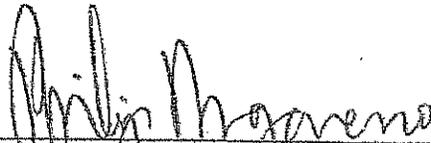
The IG's argument that it is best suited to protect the interest of the voters is simply conjecture, unsupported by any facts. The IG also argues that the County's legal strategy is being withheld from the IG. But as with any other County department, the County Attorney's litigation strategy will not be disclosed where there is a chance it may be made public or revealed to other third parties outside the County Attorney's Office when a case of this importance is being presented.

While it is clear from the Motion to Intervene that the IG seeks to fully participate in this case, analysis regarding the second prong of the intervention test is not necessary as the IG fails to demonstrate any interest to support intervention.

Therefore, for all the reasons cited herein (lack of capacity, lack of standing, and failure to meet the standard for intervention), the IG's Motion to Intervene must be denied in its entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing has been provided by U.S. mail and electronic mail (e-mail) this 29th day of June, 2012, to those on the attached service list.



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IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO.: 502011CA017953XXXXMB
DIVISION: AN

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 MANGONIA PARK,
CITY OF PALM BEACH GARDENS, TOWN OF
HIGHLAND BEACH, TOWN OF LAKE PARK,
CITY OF WEST PALM BEACH, TOWN OF
OCEAN RIDGE, and CITY OF BOCA RATON,
municipal corporations of the State of Florida,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official Capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

**PLAINTIFFS' RESPONSE IN OPPOSITION TO THE
INSPECTOR GENERAL'S MOTION TO INTERVENE**

Plaintiffs, TOWN OF GULF STREAM, et al. (the "Municipalities"), by and through their undersigned counsel, hereby file this Response in Opposition to the Inspector General of Palm Beach County's Motion to Intervene in this proceeding, and state as follows:

A. History of Proceedings.

In November of 2010, the voters of Palm Beach County (the "County") approved a referendum amending the County Charter to create a countywide Office of Inspector General

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(the "OIG"). In October of 2011, the County, through the Palm Beach County Clerk & Comptroller, sent bills to all municipalities within the County for costs associated with the OIG Program. The bills were sent pursuant to Palm Beach County Ordinance No. 2011-009 (the "Ordinance"), a copy of which is attached hereto as Exhibit 1. Both the Ordinance and the bills indicate that payment was to be made to the County, not to the OIG.

On November 14, 2011, the Municipalities filed a Complaint seeking declaratory relief that the County's charges for the OIG Program are unlawful. On December 1, 2011, Sharon R. Bock, in her Official Capacity as the Clerk & Comptroller of Palm Beach County (the "Clerk & Comptroller"), was permitted to intervene in the case. The Clerk & Comptroller had standing to intervene because her Office is established by the Florida Constitution as an independent constitutional officer with the capacity to sue and be sued. The Clerk & Comptroller seeks direction from the Court as to what her Office's obligations are under the Ordinance given the legal challenge from the Municipalities. On December 5, 2011, the County filed its Answer. Affirmative Defenses and Counterclaim demanding payment from the Municipalities.

On December 21, 2011, this Court entered an Agreed Order staying the litigation until the parties completed the required inter-governmental dispute resolution process outlined in Chapter 164 of the Florida Statutes. The last step in the dispute resolution process, which was mediation, was completed on May 18, 2012, and resulted in an impasse. On June 19, 2012, this Court entered an Order lifting the stay on the litigation.

B. The OIG's Motion to Intervene.

On June 7, 2012, before the stay of the litigation was lifted, the OIG filed a Motion asking to intervene in the proceedings with full party status. In support of this Motion, the OIG alleges that the County is not adequately representing its interests. The OIG also alleges that it has standing to intervene because it is "independent" of the County. The OIG states that if it is

permitted to intervene, the OIG intends on filing a motion to dismiss the Municipalities' Complaint, a motion to dismiss the Clerk & Comptroller's Complaint in Intervention, and two "crossclaims" seeking writs of mandamus against the Municipalities and the Clerk & Comptroller.

C. The OIG Should Not Be Permitted to Intervene in This Case.

The County has filed a Response in Opposition to the OIG's Motion to Intervene and argues that while the OIG is functionally independent of the County, the OIG is not legally independent of the County. The OIG is not a separate legal entity for purposes of suing or being sued. The OIG also has no standing to intervene in this lawsuit. Therefore, the OIG should not be permitted to intervene in these proceedings.¹ The Municipalities support and adopt the legal arguments contained in the County's Response in Opposition on these issues.

It also is important to note that the express terms of the Ordinance that created the OIG prevent it from intervening in this case. Section 2-429(7) of the Ordinance provides:

The Office of the Clerk and Comptroller shall invoice the county and each municipality one-fourth of the proportionate share as adjusted on October 10, January 10, April 10 and July 10 of each year. Payment shall be submitted to the [County] and due no later than thirty (30) days from the date of the invoice. Upon receipt, all funds shall be placed in the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund. **In the event payment is not timely received, the county or any municipality in compliance with this section may pursue any available legal remedy.** (emphasis added).

This Section clearly states that if a municipality does not pay the County's charges for the OIG Program, then the only entities that can sue are the County or any municipality that has paid. The Ordinance expressly excludes the OIG from this list of parties that can sue for non-payment. When an ordinance expressly provides the manner of doing a thing, it cannot be done another

¹ For these same reasons, the OIG does not have standing to file its own action against the Municipalities and move to consolidate it with this proceeding. See Motion to Intervene at p. 7.

way. See e.g., Bush v. Holmes, 919 So. 2d 392, 408 (Fla. 2006) (general principle of statutory construction is “expression unius est exclusio alterius” or “the expression of one thing implies the exclusion of another”); Thayer v. State, 335 So. 2d 815, 817 (Fla. 1976) (same).

D. Prejudice to the Municipalities.

Despite the OIG’s argument to the contrary, the OIG’s intervention as a full unsubordinated party in this case will prejudice the Municipalities. See Motion to Intervene at p. 7. The Municipalities are filing a Motion for Partial Summary Judgment shortly. This Motion, if granted, could resolve the case. The OIG, however, has stated that it intends to file two (2) legally unsupported motions to dismiss and two (2) legally unsupported “crossclaims” for writs of mandamus if it is allowed to intervene. See Motion to Intervene at p. 8. The Municipalities are concerned that the OIG’s filings will interfere with the scheduling of a hearing on their Motion for Partial Summary Judgment, and will also unnecessarily prolong the litigation.

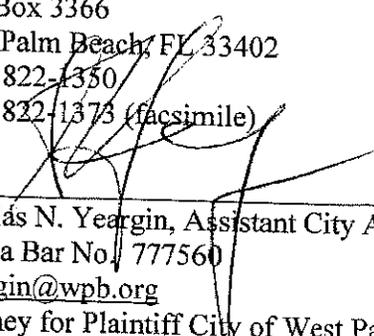
Moreover, the law of intervention provides that an intervenor must accept the pleadings of the case as it finds them at the time of intervention. See e.g., Arsali v. Chase Home Finance, LLC, 79 So. 3d 845, 847 (Fla. 4th DCA 2012); Omni Nat’l Bank v. Georgia Banking Company, 951 So. 2d 1006, 1007 (Fla. 3d DCA 2007). The intervenor is not permitted to contest the plaintiff’s claim. Omni Nat’l Bank, 951 So. 2d at 1007. The OIG’s proposed pleadings go against these established intervention principles.

WHEREFORE, the Municipalities respectfully request that this Court deny the Office of Inspector General’s Motion to Intervene in its entirety, and grant such other and further relief as deemed just and proper under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to: Andrew J. McMahon, Esq., Chief Assistant County Attorney, P.O. Box 1989, West Palm Beach, Florida 33402, Martin Alexander, Esq., Holland & Knight, LLP, 222 Lakeview Avenue, Suite 1000, West Palm Beach, Florida 33401, Nathan A. Adams, IV, Esq., Post Office Drawer 810, Tallahassee, Florida 32302, and Robert B. Beitler, Esq., General Counsel for Office of the Inspector General, Palm Beach County, P. O. Box 16568, West Palm Beach, FL 33416, this ____ day of June, 2012.

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000264

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

DIVISION AN
CASE NO. 502011CA017953XXXXMB

TOWN OF GULF STREAM, et al.

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,
Defendant.

_____/

SHARON R. BOCK, in her official capacity
as the CLERK & COMPTROLLER OF PALM
BEACH COUNTY, FLORIDA.

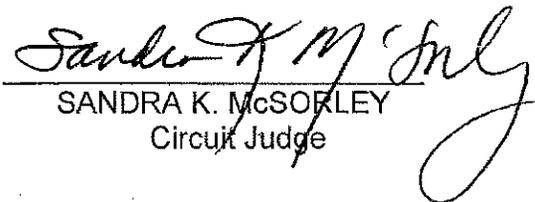
Intervenor.
_____ /

ORDER OF DISQUALIFICATION

On the Court's own Motion, it is hereby

ORDERED AND ADJUDGED that the undersigned disqualifies herself from further
action in the above-captioned cause. This case shall be reassigned at random by the
Clerk of Court to another Circuit Court civil division.

DONE AND ORDERED in chambers, West Palm Beach, Palm Beach County,
Florida this 5th day of July, 2012.



SANDRA K. MCSORLEY
Circuit Judge

000265

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000267

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

TOWN OF GULF STREAM, et al.,

CASE NO. 502011CA017953XXXXMB

Plaintiffs,

DIVISION: AN

v.

PALM BEACH COUNTY,

Defendant.

SHARON R. BOCK, in her Official Capacity
as the Clerk and Comptroller of Palm Beach
County, Florida,

Intervenor.

COPY
RECEIVED FOR FILING
JUL 16 2012
SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

**PALM BEACH COUNTY'S ANSWER TO INTERVENOR'S AMENDED COMPLAINT
CROSS CLAIM, AND COUNTERCLAIM FOR DECLARATORY AND OTHER RELIEF**

COMES NOW, Defendant, PALM BEACH COUNTY, a political subdivision of the State of Florida (hereinafter the "County"), and files this Answer to Intervenor's Amended Complaint, Cross Claim, and Counterclaim for Declaratory and Other Relief, and in support thereof, states as follows:

Introduction

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.

6. Admitted.

7. Admitted.

Jurisdiction and Venue

8. Admitted.

9. Admitted.

Parties

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. a) Admitted.

b) Admitted that only if the Ordinance is determined to be illegal would compliance thereunder give rise to such liability and it is denied that the Ordinance is illegal in any respect.

c) Denied. It is further specifically denied that the Clerk and Comptroller has been "prevented" from carrying out her duties under the Ordinance with regard to any Municipalities that have paid pursuant to the Ordinance

for the funding of the Office of Inspector General since these projects were made voluntarily.

d) Admitted as to the Municipalities questioning the legality of the Ordinance in this lawsuit, but denied as to the Municipalities that have made voluntarily payments thereunder.

General Allegations

20. Admitted.

21. Admitted, however, the Ordinance speaks for itself as to the "various actions" alleged and required thereunder.

22. a) Admitted, however without knowledge as to any allegations contained in footnote number one.

b) Admitted.

c) Admitted, however without knowledge as to any allegations contained in footnote number two.

d) Without knowledge and therefore denied.

23. Admitted that all funds in the Office of Inspector General account, including those paid by Municipalities pursuant to the Ordinance, are subject to use by the Office of Inspector General to pay bona fide expenditures and obligations. However, the County is without knowledge as to the specific regularity of any request made by the Office of Inspector General to the Clerk and Comptroller to pay expenditures from the account.

24. Admitted.

25. Admitted that the City of West Palm Beach and the other Municipal Plaintiffs in this lawsuit have declined to pay the referenced invoices for the funding of the Inspector General program and that the City of West Palm Beach and other Municipal Plaintiffs have in fact filed the instant lawsuit. However, as to Exhibit B, the County admits only to the authenticity of the November 9, 2011 letter from the City of West Palm Beach to Sharon R. Bock, Esquire, as Clerk and Comptroller of Palm Beach County, but denies any substantive allegations contained therein.

26. Admitted only that the Municipal Plaintiffs filed the underlying lawsuit, the remaining allegations are denied.

27. a) Denied that the Clerk and Comptroller may be liable for merely invoicing the subject Municipalities.

b) Denied that the Clerk and Comptroller merely receiving and depositing funds received pursuant to the Ordinance from the Municipalities will give rise to any liability, however the remaining allegations of subparagraph B are admitted.

28. Admitted. However, it is denied that the Ordinance is invalid or that the Ordinance itself gives rise to the need for any declaratory or other relief.

29. Denied that the Clerk and Comptroller has been prevented from invoicing the Municipal Plaintiffs for their portion of the funding of the Office of Inspector General pursuant to the Ordinance. The remaining allegations of this paragraph are admitted except as to invoicing the Municipal Plaintiffs.

30. Without knowledge and therefore denied.

31. Admitted.

COUNT 1 – DECLARTORY RELIEF

32. The County re-alleges and incorporates its responses to paragraph 1 – 31 as if fully set forth herein.

33. Admitted for jurisdictional purposes only, but denied that the Ordinance itself gives rise to the need for any declaratory or other relief.

34. Admitted only that the Clerk and Comptroller is uncertain as to what actions she should take pursuant to the Ordinance and that the Clerk and Comptroller has refused to undertake any collection efforts to obtain funding from the Municipal Plaintiffs for the Office of Inspector General, but denied that such actions are proper as to subparagraphs (a) – (f).

35. Admitted.

36. Admitted as to the Clerk and Comptrollers responsibilities pursuant to the Florida Constitution and Florida law, but it is denied that the Ordinance is unlawful in any respect.

37. Admitted that the parties to this lawsuit are in an antagonistic and adverse posture and all are before this court by proper process.

WHEREFORE, Defendant, Palm Beach County respectfully requests this Court enter a final declaratory judgment determining the Ordinance is lawful in all respects and that the parties are directed to comply with the Ordinance in all respects.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing has been provided by U.S. Mail and E-Mail this 16th day of July, 2012, to those on the attached service list.



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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 50 2011 CA 017953

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, VILLAGE OF WELLINGTON,
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,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

NOTICE OF HEARING

PLEASE BE ADVISED that SHERYL STECKLER, in her official capacity as Inspector
General of Palm Beach County, will call on for hearing the Inspector General's Motion to
Intervene in the above case, before The Honorable Catherine M. Brunson, Circuit Court Judge,

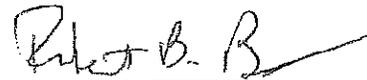
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On Friday, September 14, 2012, at 9:00 a.m.in Courtroom 10D, the Main Judicial Complex, 205

N. Dixie, West Palm Beach, Florida. Thirty minutes have been reserved.

PLEASE GOVERN YOURSELF ACCORDINGLY.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and
U.S. Mail this 18th day of July, 2012, to those on the attached service list.



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000278

IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO.: 502011CA017953XXXXMB
DIVISION: AO

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 MANGONIA PARK,
CITY OF PALM BEACH GARDENS, TOWN OF
HIGHLAND BEACH, TOWN OF LAKE PARK,
CITY OF WEST PALM BEACH, TOWN OF
OCEAN RIDGE, and CITY OF BOCA RATON,
municipal corporations of the State of Florida,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official Capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

**PLAINTIFFS' ANSWER TO THE CLERK & COMPTROLLER OF PALM BEACH
COUNTY'S AMENDED COMPLAINT IN INTERVENTION, AND COUNTERCLAIM
FOR DECLARATORY RELIEF**

Plaintiffs, TOWN OF GULF STREAM, et al. (the "Municipalities"), by and through their undersigned counsel, hereby file their Answer to SHARON R. BOCK, in her Official Capacity as the Clerk & Comptroller of Palm Beach County, Florida's (the "Clerk & Comptroller"), Amended Complaint in Intervention, and Counterclaim for Declaratory Relief, and allege as follows:

RECEIVED

JUL 13 2012

PB. COUNTY ATTORNEY

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1. The Municipalities are without knowledge as to the allegations contained in Paragraphs 1-7, 14, 19, 22-23, 27-31, 34-36 and therefore deny these allegations and demand strict proof thereof.

2. The Municipalities admit the allegations contained in Paragraphs 8-13, 18, 20, 21, 25, 33, 37.

3. With respect to the allegations contained in Paragraph 15, the Municipalities admit that section 28.12, Florida Statutes states in part: "The clerk of the circuit court shall be clerk and accountant of the board of county commissioners. He or she shall keep the minutes and accounts and perform such other duties as provided by law." The Municipalities are without knowledge as to the remaining allegations contained therein and therefore deny the remaining allegations and demand strict proof thereof.

4. With respect to the allegations contained in Paragraph 16, the Municipalities admit that section 28.12, Florida Statutes states in part: "The clerk shall have custody of the seal and affix the same to any paper or instrument as required by law." The Municipalities are without knowledge as to the remaining allegations contained therein and therefore deny the remaining allegations and demand strict proof thereof.

5. With respect to the allegations contained in Paragraph 17, the Municipalities admit that section 129.09, Florida Statutes states:

County auditor not to sign illegal warrants.—Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be personally liable for such amount, and if he or she shall sign such warrant willfully and knowingly he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

but are without knowledge as to the remaining allegations contained therein and therefore deny the remaining allegations and demand strict proof thereof.

6. With respect to the allegations contained in Paragraph 18, the Municipalities admit that section 136.08, Florida Statutes states:

Accounts subject to examination by authorized persons.—The accounts of each and every board and the county accounts of each and every depository, mentioned or provided for in this chapter, shall at all times be subject to the inspection and examination by the county auditor and by the Auditor General.

but are without knowledge as to the remaining allegations contained therein and therefore deny the remaining allegations and demand strict proof thereof.

7. With respect the allegations contained in Paragraph 24, the Municipalities are without knowledge as to whether the IG Account contains insufficient revenue to fund all of the expenditures that the County budgeted for the IG for FY 2012. The Municipalities deny this allegation and demand strict proof thereof. The Municipalities admit the remaining allegations contained in Paragraph 24.

8. With respect the allegations contained in Paragraph 26, the Municipalities admit that their Complaint seeks a declaratory judgment that the County's charges for the IG Program constitute an unlawful tax. The Municipalities deny that this is the only ground on which they seek declaratory relief.

9. With respect to the allegations contained in Paragraph 32, the Municipalities reallege and incorporate by reference their answers to paragraphs 1-31 of the Clerk & Comptroller's Amended Complaint. The Municipalities admit that the Clerk & Comptroller's Amended Complaint is an action for declaratory and other relief.

10. With respect to the request for relief contained in Paragraph 4 of the "Wherefore" Clause, the Municipalities deny that the Clerk & Comptroller is entitled to an award of costs incurred in the prosecution of this action. The Clerk & Comptroller has stated that it is a neutral

third party and takes no position on the merits of the Complaint filed by the Municipalities. Therefore, the Clerk & Comptroller cannot be a prevailing party with respect to an award of costs. If, however, the Court determines that the Clerk & Comptroller can be a prevailing party with respect to an award of costs, then the Municipalities state that they are entitled to an award of their reasonable costs in defending the Clerk & Comptroller's action.

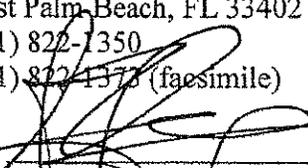
11. To the extent not expressly admitted above, the Municipalities deny each and every allegation of the Clerk & Comptroller's Amended Complaint.

WHEREFORE, the Municipalities respectfully request that the Court enter judgment in their favor, and grant such other relief as deemed just and proper under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to: Andrew J. McMahon, Esq., Chief Assistant County Attorney, P.O. Box 1989, West Palm Beach, Florida 33402, Martin Alexander, Esq., Holland & Knight, LLP, 222 Lakeview Avenue, Suite 1000, West Palm Beach, Florida 33401, and Nathan A. Adams, IV, Esq., Post Office Drawer 810, Tallahassee, Florida 32302, this 26 day of July, 2012.

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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

TOWN OF GULF STREAM, et al.,

CASE NO. 502011CA017953XXXXMB

Plaintiffs,

DIVISION: AO

v.

PALM BEACH COUNTY,

Defendant.

SHARON R. BOCK, in her Official Capacity
as the Clerk and Comptroller of Palm Beach
County, Florida,

Intervenor.

COPY
RECEIVED FOR FILING

JUL 26 2012

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

**PALM BEACH COUNTY'S AMENDED MOTION FOR LEAVE TO AMEND
ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

COMES NOW, the Defendant, Palm Beach County, by and through its undersigned Assistant County Attorney, pursuant to Rule 1.190(a), Florida Rules of Civil Procedure, and files this Amended Motion for Leave to Amend Answer, Affirmative Defenses and Counterclaim, and in support thereof, states the following:

1. The County is seeking leave to amend its Answer, Affirmative Defenses and Counterclaim.
2. Leave to amend "shall be freely given when justice so requires." Rule 1.190(a), Florida Rule of Civil Procedure.
3. Leave to amend should not be denied unless the privilege has been abused, there is prejudice to the opposing party, or amendment would be futile. Cousins Restaurant Associates, LLP, et al., v. TGI Friday's, Inc., 843 So.2d 980 (Fla. 4th DCA

2003) (reversing denial of leave to amend after notice of trial).

4. In the instant case, the privilege to amend has not been abused because this is the County's first amendment to its pleadings.

5. Further, the case is still in early pleading stage and is not set for trial so there is no prejudice to any party.

6. Justice requires the amendment of the County's pleadings to fully set forth the issues and defenses in this case.

7. The proposed Amended Answer, Affirmative Defenses and Counterclaims are attached hereto as Exhibit "A".

WHEREFORE, the Defendant, Palm Beach County, respectfully requests that this Court grant the County's Leave to Amend.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing has been provided by U.S. Mail and E-Mail this 36 day of July, 2012, to those on the attached service list.



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IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

TOWN OF GULF STREAM, et al.,

CASE NO. 502011CA017953XXXXMB
DIVISION: AO

Plaintiffs,

v.

PALM BEACH COUNTY, a political
subdivision of the State of Florida,

Defendant.

SHARON R. BOCK, in her Official Capacity
as the Clerk and Comptroller of Palm Beach
County, Florida,

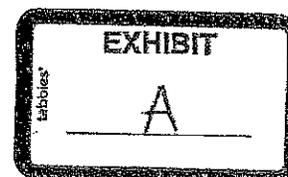
Intervenor.

**DEFENDANT, PALM BEACH COUNTY'S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

Defendant, PALM BEACH COUNTY (County), states as follows for its Answer,
Affirmative Defenses, and Counterclaims to Plaintiffs' Complaint for Declaratory Relief (the
paragraph numbers of the Answer correspond to those of the Complaint):

ANSWER

1. Admitted.
2. Admitted that this action arises out of the establishment of a Countywide Office of
Inspector General; otherwise, denied.
3. Admitted.
4. Admitted.



000291

5. Admitted.
6. Admitted.
7. Upon information and belief, a motion to abate has been prepared but has not yet been filed. (Hence, this pleading.)
8. Admitted, and the Charter speaks for itself.
9. Admitted.
10. Admitted.
11. Admitted, although none of those amendments are related in any way to the subject of this action.
12. Admitted, except denied that Protection of Wells and Wellfields, and Countywide Impact Fees are entirely funded by the County.
13. Admitted.
14. Admitted.
15. Denied that what are described as Ethics Regulations were solely the result of Commissioner crimes; otherwise, admitted.
16. Admitted, except denied to the extent the descriptions are intended to be complete.
17. Admitted.
18. The ordinance speaks for itself, and without emphasis.
19. Admitted.
20. Admitted; the ordinance speaks for itself.
21. Admitted; except denied that the funding described was for the entire fiscal year.
22. Admitted.

23. The ordinance speaks for itself, and without emphasis.
24. Admitted.
25. Admitted.
26. Admitted; except denied that the funding described was for the entire fiscal year.
27. Admitted that the County adopted what is described as the Ballot Ordinance;
otherwise denied.
28. Admitted.
29. The ordinance speaks for itself, and without emphasis.
30. Admitted.
31. The ordinance speaks for itself, and without emphasis.
32. Admitted.
33. Admitted.
34. Admitted.
35. Denied.
36. Admitted; except denied that the Municipalities were or are powerless to determine
funding.
37. Admitted.
38. The ballot amendment speaks for itself.
39. The ballot amendment speaks for itself.
40. The ballot amendment speaks for itself.
41. Denied that the Ballot Ordinance directed that the voters rely on either the Original
Ordinance or the Amended Ordinance as to estimated costs, included or excluded contracts, or in

any respect; second sentence denied.

42. Admitted.

43. Admitted.

44. Admitted that the Implementing Ordinance is not identical to the Original Ordinance and/or the Amended Ordinance. Denied that any funding mechanism was utilized in the Ballot Ordinance.

45. The ordinance speaks for itself, and without emphasis.

46. The ordinance speaks for itself, and is not contradictory.

47. The ordinance speaks for itself. Denied that the proportionate share calculation is not based on contract amounts.

48. Admitted.

49. Admitted.

50. Denied.

51. Denied. The Clerk & Comptroller invoiced the Municipalities.

COUNT I – ALLEGEDLY UNLAWFUL TAX

52. The County restates and incorporates by reference paragraphs 1-51 of this Answer.

53. Admitted.

54. Denied.

55. Admitted; the municipal shares are a means of apportioning the cost of the program, and are not themselves a fee.

56. Denied.

57. Admitted; the municipal shares are a means of apportioning the cost of the program, and are not themselves a special assessment.

58. Denied.

59. Denied.

60. Admitted.

61. Admitted.

62. Denied to the extent this would be the only alternative.

63. Admitted that they could be similar. Denied to the extent this would be the only alternative.

64. Admitted; the ordinance speaks for itself.

65. Denied.

66. Denied.

67. Denied.

68. Denied there is any unlawful tax involved.

69. Denied.

70. Denied.

71. Denied.

COUNT II – ALLEGED DOUBLE PAYMENT

72. The County restates and incorporates by reference paragraphs 1-51 of this Answer.

73. Admitted as to the Implementing Ordinance; otherwise, denied.

74. Denied.

- 75. Admitted.
- 76. Admitted.
- 77. Denied.
- 78. Admitted that they pay municipal taxes; denied that such taxes are necessary for funding the Office of Inspector General (OIG, or the program).

- 79. Denied.
- 80. Denied.
- 81. Denied.
- 82. Denied.
- 83. Denied.
- 84. Denied.
- 85. Denied.

COUNT III – ALLEGED LACK OF CHARTER AUTHORITY

- 86. The County restates and incorporates by reference paragraphs 1-51 of this Answer.
- 87. LOGER is a method of cost apportionment and not a funding requirement; otherwise, admitted.
- 88. Denied; the Ballot Ordinance provided that the program would be funded at a minimum of 0.25% of contracts, as determined by the Implementing Ordinance.
- 89. Admitted.
- 90. Admitted.
- 91. Denied.
- 92. Denied they are quite different.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

COUNT IV- ALLEGED CONFLICT WITH GENERAL LAW

98. The County restates and incorporates by reference paragraphs 1-51 of this Answer.

99. Admitted.

100. Admitted.

101. Admitted.

102. Admitted.

103. Denied.

104. Denied.

105. Denied.

106. First sentence admitted; second sentence denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied appropriation is necessary.

111. Admitted.

112. Denied.

113. Denied that appropriation is required.

114. Denied.

115. Denied.

116. Denied.

AFFIRMATIVE DEFENSES

1. Any fees imposed on the Municipalities are regulatory fees lawfully imposed pursuant to the County's police power and do not exceed the cost of the regulatory activity or are reasonably commensurate with the cost of the regulatory activity—i.e., the proper and efficient funding of the OIG.

2. The County Charter, as amended, is valid and provides authority for the subject fees pursuant to the LOGER cost apportionment methodology, even though a precise funding methodology was not specifically identified in the ballot ordinance. The ballot title and summary fairly informed the voters of the chief purpose of the amendment (funding of the OIG), and the language of the title and summary did not mislead the public in that they specifically informed the public that the OIG will be funded, in part, by each Municipality. Greater specificity is not contemplated or required by Section 101.161(1), Florida Statutes (2010), nor is it legally required to exhaustively explain every ramification of the proposed amendment.

3. The subject ordinance is not inconsistent with general law, but is consistent with general law including Section 166.221, Florida Statutes (2010), and any fees imposed by the ordinance are consistent with such general law(s).

4. To the extent any fees are imposed on Municipalities by the subject ordinance, they are imposed by the expression of a majority of the voting public in the County and in each Municipality for funding the OIG. Such fees are not an illegal double tax, as municipal residents

already pay both city and County ad valorem taxes, for different purposes; similarly, the benefits of OIG oversight accrue to the benefit of taxpayers in any Municipality in different and additional ways than such benefits accrue to taxpayers in unincorporated parts of the County or to taxpayers in another Municipality.

5. Further, the residents of the Municipalities are not being taxed at all, as the OIG is funded through regulatory fees which can be passed on by each Municipality to the vendors providing specified goods or services to each Municipality. Specifically, the Municipalities may require its vendors to pay up to one quarter of one percent (0.25%) of the dollar value of its contracts to defray the costs of OIG operations. This percentage paid by the vendors may vary as set forth in the ordinance based on a variety of factors including the precise amount of the fee, contract types used to determine the total value of the contract activity, the exact budget requested and approved for the OIG operations and similar factors. Therefore, the Municipalities are able to pass these regulatory fees on to the vendors so neither the citizens, nor the Municipalities directly fund the operation of the OIG. There is no unfunded mandate or similar forced budget allocation.

6. The Municipalities have a contract implied in law or quasi contract to pay for the services of the OIG because: 1) they are receiving a benefit from such services, being the ferreting out and elimination of fraud, waste and mismanagement of municipal funds by municipal officials; 2) the Municipalities have knowledge of the benefits from OIG oversight and the approval of a majority of the voters in each; 3) the Municipalities have repeatedly expressed a desire to accept and retain the benefits of OIG oversight; and 4) given these circumstances it would be inequitable and unjust for the Municipalities to have received, and to continue to receive such benefits without paying a fair dollar value for it.

WHEREFORE, the County respectfully requests that this Court enter judgment on Plaintiffs' Complaint in the County's favor, and against Plaintiffs, at Plaintiffs' cost.

COUNTERCLAIMS

COUNT I

1. This is an action for breach of County Ordinance No. 2011-009 (codified at Art. XII, Sec. 2-429, Palm Beach County Code), a copy of which was attached to Plaintiffs' Complaint as Exhibit 4, and is incorporated herein by reference.

2. The County incorporates by reference paragraphs 2-6 of Plaintiffs' Complaint, and the definition of Municipalities set forth on the first page of the Complaint—i.e., all of the Plaintiffs.

3. Intervenor Sharon R. Bock, in her capacity as Clerk & Comptroller of Palm Beach County (Clerk & Comptroller), as alleged in her Motion to Intervene, at paragraph 10, has invoiced the Municipalities for operation of the OIG for Fiscal Year 2011 and the first quarter of Fiscal Year 2012.

4. In violation of this County Ordinance, each of the Municipalities has failed and refused to pay the amounts invoiced pursuant to this Ordinance and has refused to make any future payments thereunder.

5. The Inspector General has indicated her intention to fulfill her duties as set forth in Art. XII, Sec. 2-423 with respect to the Municipalities, as well as all other governmental entities participating in the OIG program.

6. In the absence of funding from the Municipalities, the oversight by the OIG will be substantially less comprehensive than it would be with full funding of the OIG.

7. The County has been damaged by the OIG's diminished oversight of its vendors and other activities the OIG conducts. The OIG's diminished ability to oversee County vendors and County operations will continue as long as the Municipalities refuse to properly fund the OIG.

8. On behalf of the Municipalities the County has expended \$687,864 to fund the operation of the OIG through Fiscal Year 2012 to date.

9. Based on the existing budget, the County will expend a cumulative total of \$2,512,276 on behalf of the Municipalities through Fiscal Year 2013.

10. Art. XII, Sec. 2-431, provides that Ordinance No. 2011-009 is enforceable by all means provided by law, including injunctive relief, in this Court.

11. Further, Art. XII, Sec. 2-429 of this Ordinance expressly gives the County or any Municipality in compliance with this section the authority to enforce payment from the Municipalities.

WHEREFORE, the County respectfully requests that the Court enter a judgment awarding damages to the County as set forth herein for breach of the Ordinance, costs as allowed by law, and such other relief as the Court deems just and proper.

COUNT II

12. The County incorporates by reference paragraphs 2-6 of Plaintiffs' Complaint, and the definition of Municipalities set forth on the first page of the Complaint – i.e., all of the Plaintiffs.

13. This is a claim to recover based on a contract implied in law or quasi contract.

14. The Municipalities have expressed the desire to continue to receive the benefit of OIG oversight in the future and have received such benefit since the inception of the Countywide OIG program on June 1, 2011.

15. The Municipalities have knowledge of the benefits being conferred by OIG oversight and are also aware of the approval of such oversight by a majority of voters in each Municipality.

16. The Municipalities have accepted such benefits and choose to continue to do so.

17. It would be inequitable for the Municipalities to accept these benefits and not pay the fair cost or value for the benefit of OIG oversight.

18. The value of the benefit conferred on the Municipalities is \$687,864 through Fiscal Year 2012 and \$2,512,276 through Fiscal Year 2013.

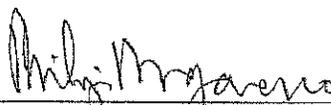
19. Art. XII, Sec. 2-431, provides that Ordinance No. 2011-009 is enforceable by all means provided by law, including injunctive relief.

WHEREFORE, the County respectfully requests that the Court enter a judgment awarding damages to the County for the value or cost of the benefit conferred by the OIG oversight of the Municipalities as set forth herein, awarding costs allowed by law, and such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been provided by email and U.S. mail this

26 day of July, 2012, to those on the attached service list.



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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

TOWN OF GULF STREAM, et al.,

CASE NO. 502011CA017953XXXXMB

Plaintiffs,

DIVISION: AO

v.

PALM BEACH COUNTY, a political subdivision
of the State of Florida,

Defendant.

SHARON R. BOCK, in her Official Capacity
as the Clerk and Comptroller of Palm Beach
County, Florida,

Intervenor.

**UNOPPOSED ORDER ON DEFENDANT/COUNTER-PLAINTIFF, PALM BEACH
COUNTY'S, AMENDED MOTION FOR LEAVE TO AMEND ANSWER,
AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

THIS CAUSE having come before the Court on Defendant/Counter-plaintiff, Palm Beach County's, Amended Motion for Leave to Amend Answer, Affirmative Defenses and Counterclaim, and the Court being advised that the Plaintiffs'/Counter-defendants' having no opposition to the entry of this Order, it is hereby,

ORDERED AND ADJUDGED that the Amended Motion for Leave to Amend Answer, Affirmative Defenses and Counterclaim is hereby **Granted** and that Defendant/Counter-plaintiff, Palm Beach County's, Amended Answer, Affirmative Defenses and Counterclaims shall be deemed filed upon entry of this Order and that the Plaintiffs'/Counter-defendants' shall file their response(s) within ten (10) days of entry of this Order.

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DONE AND ORDERED in Chambers this _____ day of August, 2012, at West Palm Beach, Palm Beach County, Florida.

SIGNED AND DATED

AUG 7 2012

Honorable Catherine M. Brunson
Circuit Court Judge

Copies furnished to:

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IN THE CIRCUIT COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO.: 502011CA017953XXXXMB
DIVISION: AN

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 MANGONIA PARK,
CITY OF PALM BEACH GARDENS, TOWN OF
HIGHLAND BEACH, TOWN OF LAKE PARK,
CITY OF WEST PALM BEACH, TOWN OF
OCEAN RIDGE, and CITY OF BOCA RATON,
municipal corporations of the State of Florida,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official Capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

**PLAINTIFFS' REPLY TO DEFENDANT, PALM BEACH COUNTY'S,
AMENDED AFFIRMATIVE DEFENSES**

Plaintiffs, TOWN OF GULF STREAM, et al. (the "Municipalities"), by and through their undersigned counsel, hereby file their reply to the amended affirmative defenses asserted by the Defendant, PALM BEACH COUNTY (the "County"), and state as follows:

1. The Municipalities avoid the First, Third and Fifth Affirmative Defenses on grounds that the charges to the Municipalities for the Inspector General Program do not constitute regulatory fees. There is no constitutional or statutory provision that allows the

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County to impose regulatory fees on the Municipalities for this Program. In addition, regulatory fees can be imposed only where there is actual regulation. The IG is not regulating the Municipalities. Rather, the IG provides a countywide service, which is limited to making recommendations. Thus, the fees cannot be “imposed” on the Municipalities.

2. The Municipalities avoid the Second and Fourth Affirmative Defenses on grounds that the County cannot do something by referendum vote that it cannot do on its own. Gaines v. City of Orlando, 450 So. 2d 1174 (Fla. 5th DCA 1984). On its own, the County does not have the legal authority to tax the Municipalities for the countywide Inspector General Program. Therefore, the County cannot use the referendum process to give itself such authority.

3. The Municipalities avoid the Fifth Affirmative Defense on grounds that they have no constitutional or statutory authority to pass the County’s “regulatory fee” onto their municipal vendors. Section 166.211, Florida Statutes, clearly states that only the governmental entity providing the regulation can impose the regulatory fee. Even assuming that the IG provides actual regulation, which is refuted by the plain language of both the Charter Amendment and the Implementing Ordinance, the Municipalities are not the ones providing the regulatory service. Section 166.211 also states that a municipality may not impose a regulatory fee if the regulation has been preempted by a county charter. The County claims it has preempted the regulatory activity based on its charter amendment. Therefore, the statute prohibits the Municipalities from passing on the fee or imposing the fee on their municipal vendors. Finally, the County has admitted during public meetings that the fee collected from vendors will not cover the entire cost of the IG Program. Therefore, even if the Municipalities could pass on the costs to their vendors, the Municipalities will still have to fund a portion of the IG Program through general fund tax dollars.

4. The Municipalities avoid the Sixth Affirmative Defense on the following grounds:

a. The County's charges for the IG Program constitute unlawful taxes. The County cannot impose taxes under a contract implied in law or a quasi-contract theory. An illegal tax is still an illegal tax.

b. The Ordinance that implemented the IG Program in the Municipalities constitutes a writing outlining the obligations of the parties. A claim under a contract implied in law or quasi contract theory cannot exist when there is a writing.

c. The Municipalities dispute that they are required to pay for the IG Program under a contract implied in law or quasi contract theory. If, however, the Municipalities are required to pay, then they are only required to pay for the benefit actually received. The County's current demand for payment for the IG Program is not commensurate with the benefits received by any of the Municipalities.

d. The taxpayers of the Municipalities already pay for the IG Program with their County taxes. There is no additional benefit conferred on the Municipalities, which would require additional payment.

e. The County demands that the Municipalities pay for the IG Program in perpetuity under a contract implied in law or quasi contract theory. The County, however, can only recover costs commensurate with benefits actually conferred. Alleged benefits for future years have not been conferred. Therefore, the County has no right to payment in perpetuity. The County's claims for future years are not yet ripe.

f. The County demands that the Municipalities pay for the IG Program in perpetuity under a contract implied in law or quasi contract theory. Florida law, however, provides that perpetual contracts cannot be enforced in equity.

g. The County demands that the Municipalities pay for the IG Program in perpetuity under a contract implied in law or quasi contract theory. It is unlawful, however, for the Municipalities to commit unspecified amounts of taxpayer dollars to the IG Program in perpetuity. Florida law requires that Municipalities maintain control over their own budgets and appropriations including, but not limited to, appropriations for obligations extending beyond the current fiscal year. See Art. VIII, § 2, Fla. Const.; and Chapters 166 and 200, Fla. Stat.

h. The County's claim for implied contract or quasi-contract is barred by the doctrine of sovereign immunity.

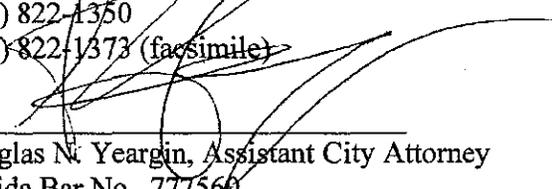
i. The County demands that the Municipalities pay for the IG Program in perpetuity under a contract implied in law or quasi contract theory. The County's claim is barred by the statute of frauds given that any alleged contract cannot be performed within the space of one (1) year.

j. The County fails to state a claim for implied contract or quasi-contract. The Florida Statutes, certain municipal charters and certain municipal ordinances provide specific requirements for the creation and execution of interlocal agreements between the County and the Municipalities. The County failed to follow these requirements. Therefore, any alleged contract is void ab initio.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to: Andrew J. McMahon, Esq., Chief Assistant County Attorney, P.O. Box 1989, West Palm Beach, Florida 33402, Martin Alexander, Esq., Holland & Knight, LLP, 222 Lakeview Avenue, Suite 1000, West Palm Beach, Florida 33401, and Nathan A. Adams, IV, Esq., Post Office Drawer 810, Tallahassee, Florida 32302, this 13 day of August, 2012.

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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO: 50 2011 CA 017953

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, VILLAGE OF WELLINGTON,
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,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the
Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

INSPECTOR GENERAL'S MEMORANDUM OF LAW ON MOTION TO INTERVENE

SHERYL STECKLER, in her official capacity as Inspector General of Palm Beach County (IG Steckler or the IG), by and through her undersigned counsel, presents this Memorandum of Law on her Motion to Intervene, currently set for hearing at 9:00 a.m. September 14, 2012, and states:

1. An independent Inspector General of Palm Beach County was mandated by the County's voters when they approved a ballot question stating, in part:

“Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish ...**an independent Inspector General** funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?” (Bold added)

On November 2, 2010, more than 72% of the County’s voters approved.

2. The resulting provisions in the County Charter (1.3(6), 8.3 and 8.4) provide that the Office of Inspector General (OIG) is to “provide independent oversight of publicly funded transactions, projects, and other local government operations” and include requirements to insure the independence of the IG. The IG is chosen by an independent “selection committee;” has a term contract; and may only be removed for cause and by a supermajority of both the selection committee and the Board of County Commissioners (BOCC).

3. Section 8.3 of the Charter also establishes a minimum level of funding for the OIG:

“an amount equal to one quarter of one percent of contracts of the county and all other governmental entities subject to the authority of the inspector general (funding base) as determined by the implementing ordinance.”

This is critical to both the independence and the operational efficiency of the OIG. If IG Steckler had to fear defunding or even a significant diminution in her budget if she displeased public officials by looking into certain matters or reporting certain facts, her independence would be seriously compromised.

4. The Implementing Ordinance (Chapter 2, Article XII) also reflects the fundamental requirement of IG independence. IG Steckler determines who she will hire, what she will investigate or audit, the records she will obtain, the witnesses she will question, and the contents of her reports.

Intervention

5. All issues in this case involve the budget and funding for the IG. As such, IG Steckler has an absolute right to intervene, and in fact is a “necessary party.” This is a matter of fundamental

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due process, and is universally reflected throughout statutory and case law in Florida.

6. This is an action for declaratory relief under Chapter 86, Florida Statutes. Section 86.091, Florida Statutes provides, in relevant part:

“When declaratory relief is sought, all persons may be made parties who have or claim any interest which would be affected by the declaration. No declaration shall prejudice the rights of persons not parties to the proceeding.”

IG Steckler claims an interest which would be affected by this Court’s declaration and has such an interest. No declaration may be issued which could affect her rights, unless she is a party.

7. The Supreme Court of Florida, in *Riviera Club v. Belle Mead Dev. Corp.* 194 So. 783 (Fla. 1940), stated at 785:

“...we have repeatedly held that intervention, by any interested party, is a matter of right and not dependent upon leave of court.” (cites omitted)

8. More recently, the Supreme Court of Florida observed:

“It is a longstanding principle of Florida law that ‘[a]ll persons materially interested in the subject matter of a suit and who would be directly affected by an adjudication of the controversy are necessary parties.’ ... **Necessary parties must be made parties in a legal action.**” (citations omitted, bold added) *Everette v. Fla. Dept of Children and Families*, 961 So. 2d 270 (Fla. 2007)

IG Steckler is materially interested in the subject matter of this suit and will be directly affected by this Court’s adjudication. She is therefore a necessary party who must be included.

9. This Court cannot properly adjudicate the matters before it without including IG Steckler.

“The proposition that a court cannot properly adjudicate matters involved in a suit when it appears that necessary and indispensable parties to the proceedings are not before the court is well settled.” *Fain v. Adams*, 121 So. 562 (Fla. 1929).

10. If a party with sufficient interest in a case is not included, any part of the judgment which affects the excluded party will be reversed. For just a few examples see: *Everette v. DCF*, supra; *Yorty v. Abreu*, 988 So. 2d 1155, 1157 (Fla. 3rd DCA 2008); and *Green v. Hood*, 98 So. 2d 488 (Fla. 1957).

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11. None of the cases cited by any of the opposing parties contradict these principles.

Capacity to Sue

12. The County (BOCC), the Municipalities, and Clerk Bock challenge IG Steckler's capacity to sue. Pursuant to Rule 1.120(a), Florida Rules of Civil Procedure, this issue must be raised by the party seeking to challenge it "by specific negative averment." Although Clerk Bock and the Municipalities have failed to comply with this latter requirement, their arguments will also be addressed.

"Capacity to sue' is an absence of legal disability which would deprive a party of the right to come into court. *59 Am.Jur.2d Parties § 31* (1971). This is in contrast to 'standing' which requires an entity have sufficient interest in the outcome of litigation to warrant the court's consideration of its position." (cites omitted) *Keehn v. Mackey*, 420 So. 2d 398, 400, headnote 1 (Fla. 4th DCA 1982).

13. At the outset, it should be noted that the County's Charter and Ordinance provide both IG Steckler and the Office of Inspector General (OIG) numerous duties and rights for overseeing the operations of the County and Municipal governments. Without the authority to access the Courts to defend and enforce those rights, these provisions would merely be words on paper.

14. All arguments that IG Steckler lacks capacity to sue are based on the erroneous premise that the Office of Inspector General (OIG), rather than IG Steckler, is seeking to intervene. The plaintiff Municipalities even so state throughout their pleading.

15. IG Steckler, who is seeking to intervene, is a natural person and an independent County officer with no legal disability, as is Clerk Bock. No party has presented a single legal precedent for ruling that an individual with no legal disability lacks the capacity to sue.

16. The County's Ordinance expressly recognizes IG Steckler's capacity to sue. If any person refuses to comply with a subpoena issued by the IG:

"... the inspector general may make application to any circuit court of this state which shall have jurisdiction to order the witness to appear before the inspector general

and to produce evidence if so ordered, or to give testimony relevant to the matter in question.” Section 2-423(3) (Bold added)

This is the capacity to sue. And with the capacity to sue, the corollary, the capacity to be sued, must follow. A person who wishes to dispute a subpoena issued by IG Steckler must have the right to seek issuance of a Writ of Prohibition or similar protective order. Naming the BOCC as the respondent would be a useless act, as it neither issued the subpoena nor controls IG Steckler in this or any other material respect.

17. The County cites only two cases to support its argument that IG Steckler lacks authority to sue and be sued, *Larkin v. Buranosky*, 973 So. 2d 1286 (Fla. 4th DCA 2008) and *Johnston v. Meredith*, 840 So. 2d. 315 (Fla. 3rd DCA 2003). These cases stand only for the proposition that, under Florida law, unincorporated associations have no legal existence, and hence no capacity to sue or be sued. **But their individual members can sue or be sued.** See also *Asociacion De Perjudicados Por Inversiones Efectuadas En U.S.A. v. Citibank, F.S.B.*, 770 So. 2d 1267, 1269 n.3 (Fla. 3d DCA 2000). IG Steckler is not an unincorporated association.

18. Even if the OIG, rather than IG Steckler, were seeking to intervene, all arguments presented by the parties on this point would still be meritless. For starters, the OIG is mandated in the County Charter and has a legal existence, unlike an unincorporated association.

19. The County argues that “The IG is simply a department of the County with functional or investigative independence.” But IG Steckler is clearly not a department of anything. And even if the OIG were seeking to intervene, the County would still be incorrect. The OIG is independent of the BOCC, and has responsibility for oversight of it and its departments. In contrast, county departments report to the BOCC, either directly or indirectly; perform the services specified by the BOCC in the manner directed by the BOCC; with the budgets deemed appropriate by the BOCC. If a department fails to perform as desired by the BOCC, the BOCC

can mandate changes in goals, policies, procedures and personnel, or eliminate the department altogether.

20. The County also asserts that “the IG’s independence does not as a matter of law give it [sic] the legal capacity to sue or be sued in its own name...” The County provides no legal authority to support this incorrect assertion. But independence is the key factor in determining whether an organization, such as the OIG, has the capacity to sue. *Lederer v. Orlando Utilities Commission*, 981 So. 2d 521 (Fla. 2nd DCA 2008), is instructive. In *Lederer*, the issue was whether the Orlando Utilities Commission (OUC) had the capacity to sue and be sued, or whether it was merely a department of the City of Orlando. The Court noted that “the interconnected relationship between the City and the OUC is both unique and strange” and that “While the OUC is part of the City for some purposes, it is independent and beyond the control of City as to the powers granted to it under the special act.” The Court pointed to the OUC’s “substantial autonomy to operate independently from the city government” and ruled that the OUC had the capacity to sue and be sued.

21. Clerk Bock cites *North Miami Water Board v. Gollin*, 171 So 2d. 584 (Fla. 3rd DCA 1965) to support its argument that IG Steckler lacks the capacity to sue and be sued. But the North Miami Water Board was not independent of the city, as the city manager had authority to control and direct the Water Board’s operations. The lack of independence was determinative. The *Lederer* court mentioned *Gollin*, but reached the opposite result because the OUC was functionally independent, as are both IG Steckler and the OIG.

22. Other examples of entities whose independence provides a necessarily implied capacity to sue and be sued include the Florida Office of Financial Regulation and Office of Insurance Regulation. See, 20.121(3); *Kligfeld v. OFR*, 876 So 2d 36 (Fla. 4th DCA 2004); and *Roche*

Surety and Casualty v. OIR, 895 So. 2d 1139 (Fla. 2nd DCA 2005).

23. The Miami-Dade IG and the Miami Dade OIG, which have a lesser degree of independence than IG Steckler and this OIG, have been party to a number of lawsuits. No challenge to either's capacity to sue or be sued appears to have been advanced. For example, see *Mazzella v. Dade County PBA and Miami-Dade County*, 971 So. 2d 803 (Fla. 3rd DCA 2007).

24. All this is simple common sense. No party can be responsible for the conduct of another party over which it lacks control. Nor can a functionally independent party be deprived of access to the courts to defend and enforce its own rights.

25. The final argument that IG Steckler lacks capacity to sue is based on the erroneous notion that Section 4.3 of the County Charter, which provides for a county attorney to be employed by the BOCC, also requires the county attorney to represent the IG. The Charter specifies that the county attorney represents:

"... the board of county commissioners, the county administrator, and all other departments, divisions, regulatory boards and the advisory boards of county government in all legal matters relating to their official responsibilities."

This argument is also without merit for numerous reasons, including:

- a. IG Steckler is not the board of county commissioners, the county administrator, or a department, division, regulatory board or advisory board of county government (nor is the OIG).
- b. Both IG Steckler and the OIG are independent of the listed entities and have their own representation.
- c. The County Attorney, in her representation of the BOCC in this case, has taken a number of positions and actions which conflict with the interests of IG Steckler and the OIG. Under these circumstances, the Florida Bar's Rule of Professional Conduct 4-1.7, prohibits her from representing both her employer, the BOCC, and the IG.

- d. The County Charter provides the IG's right to independence and a minimum level of funding. Those rights would prove illusory if IG Steckler were denied due process and prohibited from accessing the courts to defend and enforce them.

26. In conclusion, IG Steckler has the capacity to sue, as does the OIG.

Extent of the Inspector General's Rights as an Intervenor

27. The final issue to be decided by this Court relates to the extent of the authority it will allow IG Steckler after intervention.

“Anyone claiming an interest in pending litigation may at any time be permitted to assert his right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, **unless otherwise ordered by the court in its discretion.**” (Bold added) Rule 1.230, Florida Rules of Civil Procedure

28. Because IG Steckler is a party whose interests are likely to be directly and significantly impacted by this Court's rulings on the issues already before it, she should not be merely a nominal party, but should be permitted to contest every issue.

29. Clerk Bock's citation to out of context dicta in *Omni National Bank v. Georgia Banking Company*, 951 So. 2d 1006 (Fla. 3rd DCA 2007), for the premise that an intervenor “is not permitted to contest the plaintiff's claims” is misplaced. As a matter of common sense, there is no point in a party intervening in a case which would materially impact his interests unless he could challenge those very claims. In fact, in *Omni*, the 3rd DCA reversed the trial court's order which had denied Omni's right to intervene and litigate the issues material to it. *Williams v. Nussbaum*, cited in *Omni*, explains the applicable standards:

“We conceive this to mean that the intervenor may not assert matters extraneous to his own interests, but that he may avail himself of any and all arguments which relate to derivation and extent of his own interests, whether or not these matters have been previously asserted by one of the original parties.” *Williams v. Nussbaum*, 419 So. 2d 715, footnote 1 (Fla 1st DCA 1982)

30. IG Steckler does not currently propose to insert any new issues into this litigation, but rather to assert her interests as to the matters already at issue. Her interests extend to both the original complaint and the failure of the parties to provide the minimum funding required by the Charter during this litigation, which has been made an issue by the County's counterclaim.

31. Even if the failure to properly fund the OIG during this litigation had not already been made an issue, IG Steckler could have filed a separate suit which likely would have then been combined with the instant case, with the IG as a full party. Furthermore, even if the IG wished to raise entirely new claims against the parties relating to her funding, Rule 1.230 authorizes the Court to permit this, and doing so would promote justice and judicial economy.

“All the parties and the res were before the court; and in view of the aim of the rules to allow liberal joinder of parties and claims and the policy of equity to grant complete relief and avoid a multiplicity of suits, we think the lower court had full authority to allow the intervention and decide the issue therein made.” (cites omitted) *Miracle House v. Haige*, 96 So 2d 417, 418 (Fla. 1957)

32. Regarding the failure to fund the OIG, Clerk Bock and the Municipalities seem especially concerned with IG Steckler's proposed motions that would request dismissal of their respective complaints.

a. IG Steckler's proposed motions are based on the following premise:

“In Florida, the general rule is that a public official may not seek a declaratory judgment as to the nature of his duties unless he ‘is willing to perform his duties, but is prevented from doing so by others.’” *Reid v. Kirk*, 257 So.2d 3, 4 (Fla. 1972)” *Graham v. Swift*, 480 So. 2d 124, 125 (Fla. 3rd DCA 1985).

b. Because this case addresses only OIG's funding, IG Steckler should have been included as a party defendant at the outset. Had that been done, her right to file these same pleadings seeking dismissal would be beyond dispute. The plaintiffs should not be permitted to gain advantage from their attempt to exclude IG Steckler, a necessary party, from this case.

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c. If the Court permits IG Steckler to file such motions and ultimately determines them to be meritorious, that need not result in dismissal of the complaints. The Court could allow a limited period of time to comply and thereby avoid dismissal of its complaint. (The Municipalities would have to become current with their bills, and Clerk Bock would have to send out billings and cease blocking the expenditure of municipal funds by the OIG.)

33. In their Response, the Municipalities also claim that allowing IG Steckler to intervene as a full party in this case will prejudice their rights because:

“The Municipalities are filing a Motion for Partial Summary Judgment shortly. This Motion, if granted, could resolve the case,” and “The Municipalities are concerned that the OIG’s filings will interfere with the scheduling of a hearing on their Motion for Partial Summary Judgment, and will also unnecessarily prolong the litigation.”

This lawsuit was filed in November 2011, but virtually no activity occurred prior to the filing of the IG’s Motion to Intervene and nothing of substance has occurred to date. See, *Beeler v. Banco Industrial de Venezuela*, 834 So. 2d 952, 953 (Fla. 3rd DCA 2003). IG Steckler has as great an interest in the expeditious resolution of this case as do the original parties, and should herself have been an original party. IG Steckler should be a full party to this case with the right to fully litigate all issues.

Certificate of Service

I hereby certify that a copy of the foregoing Memorandum of Law has been provided by email and U.S. Mail this 29 day of August, 2012, to those on the attached service list.



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