

**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 5

T1-32

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

**CERTIFIED
COPY**

CASE NO. 50 2011 CA 017953 XXXX MB 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, 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.

_____ /

TRANSCRIPT OF THE PROCEEDINGS HELD BEFORE
THE HONORABLE CATHERINE M. BRUNSON.

Wednesday, October 24, 2012

9:33 a.m. - 10:06 a.m.

1 APPEARING ON BEHALF OF THE PLAINTIFFS, TOWNS OF
2 GULF STREAM, JUPITER, AND LAKE PARK:

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9 DELRAY BEACH:

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22 TEQUESTA AND THE TOWNS OF MANGONIA PARK AND PALM
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23

24

25 (Appearances continue on the following page.)

1 APPEARING ON BEHALF OF THE PLAINTIFF, CITY OF PALM
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12 Post Office Box 3366
13 West Palm Beach, Florida 33402

14 APPEARING ON BEHALF OF THE DEFENDANT, PALM BEACH
15 COUNTY:

16 PHILIP MUGAVERO, ESQUIRE
17 PALM BEACH COUNTY ATTORNEY'S OFFICE
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20 APPEARING ON BEHALF OF THE INTERVENOR,
21 SHARON R. BOCK:

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ALSO PRESENT ON BEHALF OF THE INSPECTOR GENERAL:

ROBERT B. BEITLER, GENERAL COUNSEL
OFFICE OF INSPECTOR GENERAL, PALM BEACH COUNTY
Post Office Box 16568
West Palm Beach, Florida 33416

1 BE IT REMEMBERED that the following
2 proceedings were taken in the above-titled cause
3 before the Honorable Catherine M. Brunson, at the
4 Palm Beach County Courthouse, Courtroom 10D, City
5 of West Palm Beach, State of Florida, on
6 Wednesday, October 24, 2012, to wit:

7 P R O C E E D I N G S

8 THE COURT: This is the Town of Gulf
9 Stream and others vs. Palm Beach County. We
10 have it scheduled for 30 minutes on a motion
11 to intervene. That will be 15 minutes per
12 side.

13 Counsel, state your appearances and we'll
14 go ahead and proceed.

15 MR. BEITLER: Thank you, Your Honor. My
16 name is Rob Beitler. I'm counsel for the
17 inspector general. It's our motion.

18 THE COURT: All right, very well.

19 MR. MUGAVERO: Phil Mugavero, on behalf
20 of Palm Beach County, Your Honor.

21 THE COURT: All right.

22 MR. ALEXANDER: Good morning, Your Honor.
23 Marty Alexander, on behalf of Sharon Bock,
24 for the clerk and comptroller of the court.

25 THE COURT: All right.

1 MR. YEARGIN: Good morning, Your Honor.
2 Douglas Yeargin, on behalf of the City of
3 West Palm Beach. And as to the other
4 municipalities, we have several other lawyers
5 for the different municipalities here.

6 If you guys want to make appearances for
7 the record, you can.

8 Terrill Pyburn, on behalf of the city of
9 Delray Beach.

10 Ken Spillias, on behalf of the Town of
11 Ocean Ridge.

12 Thomas Jay Baird, on behalf of the towns
13 of Jupiter, Lake Park, and Gulf Stream.

14 Keith Davis, on behalf of the Village of
15 Tequesta, Mangonia Park, and Palm Beach
16 Shores.

17 Diana Frieser, on behalf of the City of
18 Boca Raton.

19 THE COURT: All right.

20 MS. ASHTON: Jennifer Ashton, on behalf
21 of Palm Beach Gardens and -- two others.

22 THE COURT: All right, very well. Go
23 ahead, Mr. Beitler.

24 MR. BEITLER: Thank you, Your Honor. May
25 it please the court. In 2010, 72 percent of

1 the voters approved a county charter
2 amendment requiring an independent inspector
3 general. The charter sets the minimum
4 funding for the inspector general. The
5 ordinance sets how the funding will be
6 calculated and paid. In fiscal year 2012,
7 the county was to pay about 55 percent, which
8 is about 1.536 million, the 38 municipalities
9 45 percent, about 1.263 million of the IG's
10 mandatory minimum funding.

11 The other parties here have all objected
12 to the IG's motion to intervene. There are
13 three issues: standing, capacity to sue, and
14 rights as an intervener.

15 The legal authority I will refer to is in
16 my memo of law, which I request and move the
17 court make a part of the record. I will
18 address standing first.

19 THE COURT: All right, go ahead.

20 MR. BEITLER: Thank you. The subject of
21 this lawsuit is the IG's funding, pure and
22 simple. The municipalities have challenged
23 the formula for determining the level of
24 minimum funding for the IG. They apparently
25 would like a formula that provides less

1 minimum funding to the IG. The procedures --
2 they've also challenged the procedures of the
3 IG to obtain more than the minimum funding in
4 any year and the procedures for the IG to
5 obtain supplemental funding in any year.

6 As to each issue, the IG's material
7 interests are directly at risk. The
8 municipalities also argue that it's illegal
9 to require them to pay anything for the IG.
10 The county disputes this, but the county also
11 believes that if the municipalities prevail,
12 that's going to be the IG's problem because
13 it, the county, isn't required to make up the
14 difference. Therefore, 45 percent of the
15 IG's mandatory funding is at risk in this
16 lawsuit. And the IG is also entitled to
17 defend those claims.

18 This is an action for declaratory relief.
19 Section 860.91 provides, quote: When
20 declaratory relief is sought, all persons may
21 be made parties who have or claim any
22 interest which would be affected by the
23 declaration. No declaration shall prejudice
24 the rights of persons not party to the
25 proceedings, end quote.

1 Even if this action wasn't an action for
2 declaratory relief governed by Chapter 86,
3 the IG would have standing. I'll give you a
4 sampling of Florida Supreme Court
5 announcements on this issue, which are all in
6 my briefing notebook and in my memo of law.
7 Quote: The proposition that the court cannot
8 properly adjudicate matters involved in a
9 suit when it appears that necessary and
10 indispensable parties to the proceedings are
11 not before the court is well settled, end
12 quote. That's from Fain v. Adams from the
13 1920s.

14 Next one, quote: We have repeatedly held
15 that intervention by any interested party is
16 a matter of right and not dependent upon
17 leave of court, end quote. That's from
18 Riviera club V Belle Mead, 1940s.

19 Next one, quote: It is a longstanding
20 principle of Florida law that all persons
21 materially interested in the subject matter
22 of a suit and who would be directly affected
23 by an adjudication of the controversy are
24 necessary parties. Necessary parties must be
25 made party in a legal action. That's from

1 Everett v. DCF, 2007.

2 If a party with sufficient interest is
3 not included, any part of the judgment which
4 affects that party will be reversed. And
5 I've included in my memo multiple cases where
6 that's occurred.

7 Second issue is the IG's capacity to sue.
8 The Fourth DCA explained the difference
9 between capacity to sue and standing in the
10 case. Keen v. Mackey, quote: Capacity to
11 sue is an absence or legal disability which
12 would deprive a party of the right to come
13 into court. This is in contrast to standing,
14 which requires an entity have sufficient
15 interest in the outcome of litigation to
16 warrant the court's consideration of its
17 position.

18 Under Rule 1.1208, party's capacity to
19 sue is presumed. Anyone intending to
20 challenge it must raise the issue. And they
21 have done so.

22 The IG has capacity to sue for two
23 reasons, each independently sufficient.
24 First, the ordinance says so. It states,
25 quote: The inspector general may exercise

1 any of the powers contained in this article
2 upon his or her own initiative, end quote.
3 And one of those powers in the ordinance --
4 in that article is, quote: This article is
5 enforceable by all means provided by law,
6 including seeking injunctive relief from the
7 15th Judicial Circuit.

8 The ordinance also provides that the IG
9 may enforce her subpoena in any circuit court
10 in the state, not just the 15th Judicial
11 Circuit.

12 The second reason why the IG has capacity
13 to sue is that she's suing as an individual
14 in her official capacity. While an
15 individual may lack standing in a particular
16 case, the parties have failed to produce a
17 single case that ever held that an individual
18 without disability lacks the capacity to sue.
19 Common sense dictates that an independent
20 inspector general should not depend on a
21 board of county commissioners she's
22 attempting to oversee to defend her rights in
23 court. Any such scheme would make IG
24 independence an illusion and violate
25 fundamental due process requirements. And it

1 would make no sense for a third party seeking
2 court relief from the inspector general to
3 sue the board of county commissioners, which
4 cannot control the actions of the inspector
5 general. The inspector general has the
6 capacity to sue and be sued.

7 Now, the third issue, the final issue, is
8 the IG's role and rights after intervention.
9 The case of Williams v. Nussbaum explaining
10 that intervenor, quote, may not assert
11 matters extraneous to his own interests, end
12 quote, but may avail himself of any and all
13 arguments which relate to derivation and
14 extent of his own interests, whether or not
15 these matters have been previously asserted
16 by one of the original parties.

17 The IG is the party most seriously at
18 risk in this case. She must be permitted to
19 contest every issue that is impacting her or
20 may impact her, which includes every
21 allegation in the municipalities' complaint.

22 Additionally, this case created a related
23 issue that the county has already raised in
24 its counterclaim. And that's the failure to
25 fund the IG the minimum amount during the

1 pendency of this suit. The county, in its
2 counterclaim, points out that the IG is not
3 being fully funded because the municipalities
4 are not paying; that she, therefore, can
5 provide less coverage and the municipality is
6 thereby -- the county is thereby being
7 damaged. But the county will request
8 monetary relief for itself only at the end of
9 the lawsuit.

10 The IG also has the right to address the
11 issue of underfunding and try to remedy that
12 during the course of this case. And if that
13 issue had not already been raised by the
14 county, the IG could have filed a separate
15 suit seeking relief. But as I understand it,
16 that case would have ultimately been merged
17 with this one, anyway. Under Rule 1.230, the
18 court can even allow the IG to raise
19 unrelated claims if doing so would promote
20 justice and judicial economy.

21 Now, the clerk and the municipalities are
22 fearful that the IG proposed motions that
23 would request dismissal of their complaints
24 and argue that those are inappropriate. But
25 I'll point out to the court that the parties

1 knew the subject matter of this lawsuit from
2 the outset. They knew it involved the IG's
3 funding; they knew the IG should be a party;
4 and if they had included the IG as a party at
5 the outset, those motions could have been
6 filed without question. They would have been
7 proper motions to dismiss. And I would
8 tender to the court that the parties who have
9 failed to include the IG, who is the central
10 party to this case from the outset, should
11 not benefit from that action and the IG
12 should be placed in the same position she
13 would be had they included her at the outset
14 of the case.

15 Finally, I'll address claims that we're
16 going to unfairly delay this case if the IG's
17 permitted to intervene. The case was filed
18 in November of 2011, almost a year ago. An
19 amended complaint was filed December 15th.
20 The parties then voluntarily abated the
21 proceedings for six months. It was reopened
22 in June. Our motion to intervene was filed
23 June 7th. And we have been trying to have
24 this motion heard ever since.

25 Now, eight weeks after we filed our

1 motion to intervene, the county's amended
2 answer was filed and nobody objected to the
3 county amending its answer two months after
4 we're moving to intervene. So, we haven't
5 delayed this case. We don't intend to delay
6 this case. We have as great an interest as
7 anyone in bringing it to a speedy resolution.

8 But we should be a full party to this
9 case with the right to fully litigate all
10 issues and advance all of our related claims.
11 The IG is the party most impacted by the
12 failure to fund and most at risk from the
13 issues that are set out in the complaint.

14 Thank you, Your Honor. I would request a
15 few minutes to reply.

16 THE COURT: Certainly.

17 MR. BEITLER: Thank you.

18 THE COURT: All right, who's up?

19 MR. MUGAVERO: Good morning, Your Honor.

20 Phil Mugavero, on behalf of Palm Beach
21 County.

22 Your Honor, Mr. Beitler actually -- it's
23 important, because what this case is about,
24 Your Honor, this case is about the validity
25 of a Palm Beach County ordinance and,

1 specifically, to quote Mr. Beitler, the
2 subject of this lawsuit is the IG funding.
3 And that's an accurate statement. And the
4 funding is included in the I'll call it the
5 IG ordinance, but, for the record, it's
6 Ordinance 2011-009.

7 And the ordinance is being challenged
8 constitutionally. Notice was given under
9 Rule 1.070 of the rules of procedure and
10 86.091 of the declaratory judgment statute to
11 the state attorney, as well as the Florida
12 attorney general, about a constitutional
13 challenge to the ordinance. So, I am going
14 to keep referring to that because that is
15 what this case is about and counsel's clearly
16 acknowledged it. It is a defense of a Palm
17 Beach County ordinance.

18 And I think, Your Honor, it's probably a
19 good idea, it would also help me, too, just
20 to kind of let the court know how it is we
21 got here. In November 2010, there was a
22 ballot referendum that asked the people of
23 Palm Beach County, including the
24 municipalities, do you want an office of
25 inspector general. The people replied by

1 72 percent of the people -- Mr. Beitler was
2 correct -- yes, we do. And what that ballot
3 amendment authorized, what the referendum
4 authorized was it directed the Palm Beach
5 County Board of County Commissioners to go
6 back, amend their Palm Beach County charter,
7 and add an office of inspector general.

8 Palm Beach County went ahead and did
9 that. They amended the county charter. And
10 they implemented the office of inspector
11 general by virtue of the inspector general
12 ordinance. The inspector general was created
13 by Palm Beach County, derives all of her
14 power and authority from Palm Beach County,
15 from the ordinance specifically.

16 Now, let's go back for a minute. I
17 definitely want to be clear because the
18 ballot referendum in itself is not legal
19 authority for the court. It's not --
20 unfortunately, it's not a direct democracy;
21 it's a representative democracy. So, in
22 order for something to be law if the people
23 want it, it has to be enacted by duly elected
24 officials, which is what was done here, the
25 ordinance. The board of county commissioners

1 drafted the ordinance -- or county attorney's
2 office, and it was passed by the board of
3 county commissioners. So, that's what we're
4 dealing with here. That's really the body of
5 law, all right? We're defending the Palm
6 Beach County ordinance.

7 When we go to the -- and there's -- the
8 precise body of law that we're dealing with
9 here is Florida Statute 125.01(1)(b). And
10 what that says is it makes it the express
11 duty of the board of county commissioners to
12 provide for the defense of legal cases on
13 behalf of Palm Beach County; specifically,
14 the legislative and governing body of the
15 county shall provide for the prosecution and
16 defense of legal causes on behalf of the
17 county. That's what we're here doing.

18 The Palm Beach County Board of County
19 Commissioners has done that in the charter.
20 And, specifically, Section 4.3 of the charter
21 says: The office of the county attorney
22 shall prosecute and defend all civil actions
23 for and on behalf of Palm Beach County and
24 the board of county commissioners. That is
25 in the charter. And that was enacted

1 pursuant to the statute.

2 Again, when I said we're going back to
3 why we're here, Your Honor, we're here
4 defending the constitutionality of a Palm
5 Beach County ordinance. It's the county
6 attorney's job to do that, nobody else's.

7 And, really, the inquiry should end
8 there. It's our job by the charter.
9 Anything else -- if we try to delegate that
10 authority through the inspector general
11 ordinance, it would be void from the
12 beginning because it's contrary to the county
13 charter, which is the local government
14 constitution.

15 Now let's get to the ordinance. The
16 ordinance specifically, Your Honor, was
17 created and came into being by passing the
18 board of county commissioners. The office of
19 the inspector general is part of the county.
20 It is not a wholly independent entity with
21 capacity to sue and be sued in its own right
22 or, and especially, on behalf of Palm Beach
23 County to defend the constitutionality of a
24 county ordinance. We can't do that. That
25 would be contrary to the county charter. We

1 didn't do that in the ordinance. The office
2 of inspector general is a department, a
3 division, a regulatory body, an advisory
4 board of Palm Beach County, and nothing else.

5 Some examples: The inspector general's a
6 county employee. Her contract, her contract
7 is approved by the board of county
8 commissioners. Her paycheck is from the
9 board of county commissioners, just like
10 mine, just like the county attorney's is from
11 the board of county commissioners. The
12 inspector general prepares reports and
13 recommendations to the board of county
14 commissions. And this is right in the
15 ordinance, Your Honor, too, Page 1, Lines 39
16 to 40. And the part about the inspector
17 general's employment is Page 6, Lines 239 to
18 257. The inspector general can contract with
19 outside entities, again, subject to approval
20 of the BCC. That's the ordinance, Page 2,
21 Lines 67 and 69. The inspector general can
22 negotiate agreements with other public
23 entities for it to provide her oversight,
24 subject to approval of the board of county
25 commissioners, the ordinance, Pages 3 to 4,

1 Lines 126 to 140.

2 And finally, and last but not least,
3 Your Honor, this is important. The overall
4 IG's budget is subject to final approval of
5 the board of county commissioners. And
6 that's at the ordinance, Page 8, Lines 344
7 through 347. So, when Mr. Beitler says this
8 is about the funding of the inspector
9 general's office, it's Palm Beach County's
10 funding. She is not separate and distinct
11 from Palm Beach County in any legal sense of
12 the word. What the people wanted, what the
13 people got, was an inspector general that was
14 free from interference to investigate what
15 she wanted, any way she wanted, how far she
16 wanted, but not to go off and undertake the
17 defense, especially the constitutionality of
18 a Palm Beach County ordinance. It's contrary
19 to the body of law that we're dealing with;
20 it's contrary to the charter; it's contrary
21 to the Florida statute; and it's contrary to
22 the ordinance specifically.

23 Let's take this one step further, too.
24 In the ordinance, Your Honor, this is what
25 created the IG. Mr. Beitler, by his own

1 language, said this is about the funding.
2 The subject of the lawsuit is IG funding.
3 That's accurate. And the ordinance expressly
4 says, Page 8, Lines 353 through 354: In the
5 event payment is not timely received, the
6 county -- doesn't say the inspector general
7 -- the county or any municipality in
8 compliance with this section may pursue any
9 available remedy.

10 Again, we're defending the funding of a
11 Palm Beach County ordinance, and it's the
12 county's job to do that under the statute,
13 under the chapter, and under the ordinance.

14 I would also note, Your Honor, I would
15 also note that both before and after the
16 charter amendment that created the inspector
17 general, one thing was not changed in the
18 county charter. That was that it is the
19 county attorney's job to prosecute and defend
20 civil cases on behalf of Palm Beach County.
21 So, before and after the IG came into being,
22 it was always the county attorney's office
23 job, and it remains the county attorney's
24 office job to do.

25 The reason I raise that she was really a

1 department, a division or a regulatory body
2 within the county, within the county,
3 Section 4.3 of the charter also says: The
4 office of county attorney shall be
5 responsible for the representation of Palm
6 Beach County, the board of county
7 commissioners, the county administrator, and
8 all other departments, divisions, regulatory
9 boards, and advisory boards of county
10 government. Again, the charter expressly
11 puts this responsibility on the Palm Beach
12 County attorney's office.

13 What they're asking you to do here,
14 Your Honor, and what they want you to do, and
15 it's wrong, and I would urge the court to not
16 do it, they're asking you to insert language
17 into the Palm Beach County charter and the
18 ordinance that says that they have got the
19 legal ability to defend Palm Beach County, to
20 defend the constitutionality of the Palm
21 Beach County ordinance. That is nowhere.
22 That is nowhere that they have the right or
23 the authority to do that.

24 I am running out of time, Your Honor. I
25 want to leave time for the cities and the

1 clerk, too. But I do just want to address --
2 I do just want to address something quickly.
3 Mr. Beitler mentioned that the inspector
4 general can do whatever this article says. I
5 just think it probably goes without saying to
6 the court, but Section 7 of the resolution
7 says: The captions, section headings, and
8 section designations used in this ordinance
9 are for convenience only and shall have no
10 effect on the interpretation of the
11 provisions of this ordinance. Mr. Beitler
12 relies on the title of the article, the
13 ordinance, Article 12 inspector general, as
14 her being able to do anything she wants
15 contained in the ordinance, even though it's
16 expressly contradicted in the ordinance where
17 the funding is concerned. It says: The
18 county and the paying municipalities can
19 enforce the funding mechanism.

20 When you take this in its entirety,
21 Your Honor, you look at Florida Statute
22 125.01(1)(b); the charter, the January 2011
23 Palm Beach County charter as amended, Section
24 4.3; as well as the express language of the
25 ordinance, it's Palm Beach County's job to

1 defend the constitutionality of the
2 ordinance, not the inspector general's. We
3 don't need two entities doing the same thing.
4 And this is like any other department,
5 Your Honor, which is also in the Palm Beach
6 County charter: airports, environmental,
7 planning and zoning, any other department
8 cannot come in and say, well, you know, board
9 of county commissioners, our budget may be
10 cut, so, we're going to undertake
11 representation on our own. It's the county
12 attorney's job to do that.

13 Just let me see if I can sum up quick
14 here, Your Honor. And, again, I just want to
15 reiterate, Your Honor, that there's no
16 language or legal authority for the inspector
17 general to come in and attempt to do what
18 they're doing here. In fact, it's contrary
19 to the charter, as well as the express
20 language of the ordinance. So, I would urge
21 the court, Your Honor, I would ask the court,
22 please deny the motion to intervene.

23 I'm going to turn it over now to the
24 clerk of the court, Your Honor. Thank you.

25 THE COURT: All right, thank you.

1 Yes, sir.

2 MR. ALEXANDER: Good morning, Your Honor.

3 Marty Alexander.

4 Let me just explain briefly why it is
5 that I think all the parties are seeking to
6 ask the court to deny this motion to
7 intervene. This case is about the funding
8 mechanism. Is it constitutional, unlawful or
9 not? My client, the clerk, is a
10 constitutional officer that is charged with
11 invoicing under that ordinance and also under
12 law to disburse the funds. So, my client
13 intervened in this action to ask the court is
14 it lawful or not. Because if it's not
15 lawful, then I can't continue to do things.
16 If it is lawful, then I can continue to do
17 things.

18 Because my client, the clerk, is
19 potentially personally liable for disbursing
20 funds that are not lawfully collected. She
21 has stopped doing that and is seeking
22 guidance from the court.

23 Now, how would this granting this motion
24 delay this action? What it's going to do is
25 really start focusing the litigation as it is

1 right now on the authority of the IG to do
2 certain things. This is not like your
3 typical intervention action in that there is
4 a serious issue about capacity. And for the
5 IG's counsel to suggest that because the IG
6 is a natural person that of course she has
7 capacity really is a bit disingenuous because
8 she's not here as an individual. She's here
9 in her official capacity, as part of her
10 office, which is part of the county. And,
11 so, you have to look at capacity in that way,
12 not as a natural person. I mean, it would be
13 silly to suggest that the IG was in here in
14 this case individually using public funds to
15 assert an individual claim. The IG's not
16 doing that. The IG's here in her official
17 capacity.

18 I believe that the county has made a very
19 compelling argument based on the statute,
20 based on the charter, and based on the very
21 language in the ordinance that created the
22 IG, that as it relates to funding, the IG has
23 no capacity to pursue that.

24 And, so, what my client, and I believe
25 and the cities also are concerned about, by

1 allowing this intervention, you're going to
2 now interject into this action new issues
3 that have nothing to do with funding. And
4 case law is legion, Your Honor, including
5 every case cited by the IG, that an
6 intervener takes the action as they find it.
7 They may be able to, if the court allows
8 them, to do certain things to protect their
9 interests, but they can't come in and attack
10 pleadings that the parties themselves have
11 chosen not to deal with. I mean, the IG
12 wants to come in to this case as part of its
13 motion asking this court to dismiss a simple
14 declaratory relief request by the clerk
15 saying is this constitutional or not. By the
16 way, the clerk doesn't even take a
17 substantive position. That will be before
18 the county and the cities to take.

19 But what we don't want to see happen,
20 Your Honor, and I think would be wrong and
21 totally contrary to all of the intervention
22 law, is to allow the IG to come in and change
23 the nature and character of this litigation
24 by contesting existing pleadings that the
25 parties chose not to, and by, whether they

1 want to or not, implicitly interjecting into
2 this case the issue of independence from the
3 county, which I submit to the court has
4 nothing to do with the issue of funding. It
5 doesn't progress that issue at all.

6 So, this is a simple case, not saying
7 that it's not, you know, difficult issues,
8 but it's a simple case about funding. There
9 you go.

10 THE COURT: That was your 15 minutes.

11 Mr. Beitler, you have about three
12 minutes.

13 MR. YEARGIN: Your Honor --

14 THE COURT: Counsel, you'd have to reset
15 this for another hearing. I'd be glad to
16 give you however much time you need, but I
17 just can't have it this morning. I have a
18 trial set to start back at ten. If you think
19 you need more time --

20 MR. YEARGIN: For purposes of the record,
21 the cities would like a couple of minutes.

22 THE COURT: I mean, the court will give
23 you as much time as you'd like. We just
24 can't do it this morning. Tell me how much
25 time you think you need. If it's more than

1 30 minutes, we'll put you on a nonjury docket
2 and you can come to calendar call and set it
3 for how much time you need.

4 MR. YEARGIN: Okay. I guess you can
5 allow Mr. Beitler the time you are going to
6 give him and let me just confer quickly to
7 see.

8 THE COURT: Okay, sure.

9 Go ahead, Mr. Beitler, on rebuttal.

10 MR. BEITLER: Thank you, Your Honor.

11 In response to the county, there is
12 absolutely no conflict between the charter
13 provision which requires an independent
14 inspector general and the charter provision
15 which requires the county attorney to defend
16 the board of county commissioners. We have
17 no quarrel with the notion the board of
18 county commissioners can defend an ordinance.
19 We're not challenging their authority to
20 defend it. But when an ordinance affords a
21 person certain rights and responsibilities,
22 that person has the right to go to court and
23 defend their position and, in the process,
24 defend that ordinance.

25 In this particular case, the ordinance

1 specifically says so. The ordinance doesn't
2 preclude the inspector general from defending
3 her funding. The ordinance specifically
4 states that the inspector general can defend
5 any aspect of the ordinance and it
6 specifically states as regards to funding
7 that the county and the cities can also
8 defend issues and nonpayment.

9 We're not contesting their right to be
10 here. We're not contesting the county
11 attorney's right to defend the board of
12 county commissioners' position, but I will
13 point out one interesting thing. The issue
14 of how the IG funding is calculated, the
15 municipalities are asking it be calculated in
16 a manner to produce less funding. If they
17 prevail on that, the county pays less, too.
18 The only person who suffers is us. So, if we
19 had to depend on them solely to defend on
20 these issues, it would be an interesting
21 trial.

22 I mean, we have the right to defend our
23 interests. They have presented no case, not
24 a single case in the history of the state of
25 Florida where an individual in the IG's

1 position has ever been denied stated to lack
2 the capacity to sue and be sued. The cases
3 on standing are very, very clear. You know,
4 we probably are the person most at risk in
5 this case. We have standing. So, you know,
6 they're coming up with a bunch of arguments
7 without any legal support for why the IG
8 can't participate in this particular case.

9 You know, as regards the clerk's issue,
10 that we're injecting, you know, new and
11 complicated issues and independence and this,
12 that, and everything else, well, it was
13 really interjected by the county and by the
14 clerk and by the municipalities who say that
15 we lack capacity to sue. And they didn't --
16 independence is not relevant. If you look at
17 the two cases, the two utilities cases, one
18 utility was independent, had functional
19 independence from the city, as we do. They
20 had capacity to sue. The other utility was
21 controlled by the city manager. They lack
22 capacity.

23 Thank you, Your Honor.

24 THE COURT: All right.

25 MR. MUGAVERO: May I approach with a

1 proposed order, Your Honor?

2 THE COURT: Yes, please. Have you had
3 Mr. Beitler take a look at that?

4 MR. MUGAVERO: Sure. It says denied. Do
5 you want -- unless you want to check the
6 spelling.

7 THE COURT: If it's just a --

8 MR. MUGAVERO: It just says denied,
9 Your Honor.

10 THE COURT: -- generic order and you all
11 decide you need more time, then I'll wait.
12 And I'll wait to hear from you probably a day
13 or so. If you need more time, tell us how
14 much. If it's more than 30 minutes, we'll
15 put you on the docket. We'll give you as
16 much time --

17 MR. MUGAVERO: We have calendar call
18 before Your Honor in this case to specially
19 set some. So, if it's okay, we'll talk to
20 you then.

21 THE COURT: Sure.

22 MR. MUGAVERO: Thank you very much,
23 Your Honor.

24 (At 10:06 a.m., the proceeding was
25 concluded.

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 COUNTY OF PALM BEACH)

4

5 I, CINDY C. BENDER, Registered

6 Professional Reporter, Florida Professional

7 Reporter, certify that I was authorized to and did

8 stenographically report the foregoing proceedings,

9 and that the transcript, consisting of pages 1

10 through 32, is a true and complete record of my

11 stenographic notes.

12 I further certify that I am not a

13 relative, employee, attorney, or counsel of any of

14 the parties, nor am I a relative or employee of

15 any of the parties' attorney or counsel connected

16 with the action, nor am I financially interested

17 in the action.

18 The certification does not apply to any

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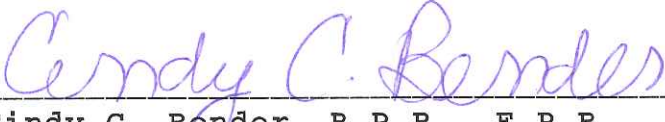
20 the direct control and/or direction of the

21 reporter.

22 DATED this 19th day of December, 2012.

23

24


Cindy C. Bender, R.P.R., F.P.R.

25

<p>0 017953 1:3</p> <hr/> <p>1 1 19:15 33:9 1.070 15:9 1.1208 9:18 1.230 12:17 1.263 6:9 1.536 6:8 10:06 1:24 32:24 1000 3:18 10D 4:4 1111 2:17 3:3 12 23:13 125.01(1)(b 17:9 23:22 126 20:1 140 20:1 15 4:11 28:10 1500 2:12 15th 10:7,10 13:19 16568 3:22 1920s 8:13 1940s 8:18 1989 3:13</p> <hr/> <p>2 2 19:20 200 2:8 2007 9:1 201 2:21 2010 5:25 15:21 2011 1:3 13:18 23:22 2011-009 15:6 2012 1:23 4:6 6:6 33:22 207 2:17 3:4 222 3:17 22A 2:4 239 19:17 24 1:23 4:6 257 19:18</p> <hr/> <p>3 3 19:25 30 4:10 29:1 32:14 32 33:10 33401 2:13 3:18 33402 3:9,13 33416 3:22 33432 2:22</p>	<p>33444 2:8 33458 2:4 33462 2:18 3:4 3366 3:8 344 20:6 347 20:7 353 21:4 354 21:4 38 6:8 39 19:15</p> <hr/> <p>4 4 19:25 4.3 17:20 22:3 23:24 40 19:16 45 6:9 7:14</p> <hr/> <p>5 50 1:3 515 2:12 55 6:7</p> <hr/> <p>6 6 19:17 67 19:21 69 19:21</p> <hr/> <p>7 7 23:6 72 5:25 16:1 7th 13:23</p> <hr/> <p>8 8 20:6 21:4 801 2:3 86 8:2 86.091 15:10 860.91 7:19</p> <hr/> <p>9 9:33 1:24</p> <hr/> <p>A a.m 1:24 32:24 abated 13:20 ability 22:19 able 23:14 27:7 about 6:7,8,9 14:23,24 15:12,15 19:16 20:8 21:1 25:7 26:4,25 28:8,11 above-titled 4:2 absence 9:11 absolutely 29:12 accurate 15:3</p>	<p>21:3 acknowledged 15:16 action 7:18 8:1,25 13:11 25:13,24 26:3 27:2,6 33:16,17 actions 11:4 17:22 actually 14:22 Adams 8:12 add 16:7 Additionally 11:22 address 6:18 12:10 13:15 23:1,2 adjudicate 8:8 adjudication 8:23 administrator 22:7 advance 14:10 advisory 19:3 22:9 affected 7:22 8:22 affects 9:4 affords 29:20 after 11:8 13:25 14:3 21:15,21 again 18:2 19:19 21:10 22:10 24:14 ago 13:18 agreements 19:22 ahead 4:14 5:23 6:19 16:8 29:9 airports 24:6 Alexander 3:16 4:22,23 25:2,3 all 4:18,21,25 5:19,22 6:11,19 7:20 8:5,20 10:5 11:12 14:9,10,18 16:13 17:5,22 22:8 24:25 25:5 27:21 28:5 31:24 32:10 allegation 11:21 allow 12:18 27:22 29:5 allowing 27:1 allows 27:7 almost 13:18 already 11:23 12:13 always 21:22 am 15:13 22:24 33:12,14,16 amend 16:6 amended 13:19 14:1 16:9 23:23</p>	<p>amending 14:3 amendment 6:2 16:3 21:16 amount 11:25 and/or 33:20 announcements 8:5 another 28:15 answer 14:2,3 anyone 9:19 14:7 anything 7:9 18:9 23:14 anyway 12:17 AO 1:3 apparently 6:24 appearances 2:25 4:13 5:6 APPEARING 2:1,5,9,14,19 3:1,6,10,15 appears 8:9 apply 33:18 approach 31:25 approval 19:19,24 20:4 approved 6:1 19:7 argue 7:8 12:24 argument 26:19 arguments 11:13 31:6 article 10:1,4 23:4,12,13 Ashton 3:2 5:20 ask 24:21 25:6,13 asked 15:22 asking 22:13,16 27:13 30:15 aspect 30:5 assert 11:10 26:15 asserted 11:15 ASSISTANT 2:7 3:7 attack 27:9 attempt 24:17 attempting 10:22 attorney 2:7,20 3:7 15:11,12 17:21 22:4 29:15 33:13,15 attorney's 3:12 17:1 18:6 19:10 21:19,22,23 22:12 24:12 30:11 authority 6:15 16:14,19 18:10 22:23 24:16 26:1 29:19 authorized 16:3,4 33:7 avail 11:12</p>
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