



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

To: Board of County Commissioners
 From: Robert A. McMillan, County Attorney
 Date: July 13, 2004
 Subject: Payment of Attorneys' Fees and Legal Costs
 Commissioner Randall C. Morris

Invoices for the payment of attorneys' fees and costs related to complaints filed against Commissioner Morris with the Florida Commission on Ethics for actions taken as a member of the Board of County Commissioners have been submitted to the County for payment.¹ The submitted invoices total \$12,953.21.²

The purpose of this memorandum is to discuss and analyze the law in Florida applicable to this matter and to make a recommendation to the Board of County Commissioners based upon the law and the public policies underpinning that law. In terms of the factual matters regarding the disposition of the ethics complaint and the request for payment, I am attaching copies of the Final Orders and Public Reports adopted by the Ethics Commission on April 28, 2004 and copies of the invoices submitted by the attorneys who represented Commissioner Morris regarding the complaints.

Commissioner Morris is an elected member of the Board of County Commissioners and, therefore, a "public officer" by virtue of that office.³ The complaints filed all relate to actions taken as a County Commissioner.

¹ Copies of the complaints are now public records and available for review upon request.

² This is not the first time the County has been required to pay for legal representation of a public official based on being cleared by the Commission on Ethics. In 1993 the County paid over \$43,000 for the representation of an appointed member of a County advisory board who was alleged to have had a voting conflict. That complaint went to a full evidentiary hearing before a state hearing officer. In the current situation the extra costs were avoided because no probable cause was found to exist and therefore no full hearing was necessary.

³ Section 112.3143(1)(a), Florida Statutes (1993), provides that the term "[p]ublic officer includes any person elected or appointed to hold office in any agency ..." The term "agency" is defined in Section 112.312, Florida Statutes (1993), as "... any state, regional, county, local or municipal government entity of this state"

The Florida Supreme Court clearly acknowledged in the case of *Thornber v. City of Fort Walton Beach*, 568 So.2d 914, the general entitlement of public officials to reimbursement for legal defense costs resulting from public service. In the *Thornber* decision the Florida Supreme Court stated that:

Florida courts have long recognized that public officials are entitled to legal representation at public expense to defend themselves against litigation arising from their official duties while serving a public purpose. 568 So. 2d at 916-917.

The public policy supporting this rule of law is a strong one and is based on common law principles. The Florida Supreme Court stated that:

[t]he purpose of this common law rule is to avoid the chilling effect that a denial of representation might have on public officials in performing their duties properly and diligently. 568 So. 2d at 917.

This rule was stated even more directly in *Omelo v. City of Sunrise*, 423 So. 2d 974, 976 (Fla. 4th DCA), *petition for review dismissed*, 431 So. 2d 988 (Fla. 1983), where the court said an, "... obligation arises independent of statute, ordinance or charter. It is not subject to the discretion of the keepers of the city coffers."

In a footnote from the *Thornber* Supreme Court Decision, the Court recognized that this common law principle applies when a public officer is the subject of a complaint filed with the Florida Commission on Ethics. In other words, even absent a specific statutory obligation, Florida law authorizes, indeed encourages, such reimbursement of public officers. The Attorney General of the State of Florida and the First District Court of Appeal had reached the same conclusion prior to the Florida Supreme Court's decision in *Thornber*. See, Opinion of the Attorney General of Florida 85-51 (July 18, 1985) and *Ellison v. Reid*, 397 So. 2d 353, 354 (Fla. 1st DCA 1981), wherein the District Court of Appeal stated:

[t]here is no doubt a valuable public purpose is served in protecting the effective operation and maintenance of the administration of a public office. If a public officer is charged with misconduct while performing his official duties and while serving a public purpose, the public has primary interest in such a controversy and should pay the reasonable and necessary legal fees incurred by the public officer in successfully defending against unfounded allegations of official misconduct.

Accordingly, based on the foregoing, although it cannot be said that attorneys' fees and costs must be paid by the County in every case when a public officer of Seminole County is accused of official misconduct and successfully defends against the

charges⁴, it is clear that an entitlement to payment of such fees exists if the Board of County Commissioners finds that the complaints relate to matters that arose out of or in connection with the performance of official duties and that the actions served a public purpose.

The ethics complaints filed involved actions taken by Commissioner Morris' in his role as County Commissioner and, therefore, the accusations arose out of his public duties and are the result of actions taken or not taken as an elected County Commissioner. In each case the Commission on Ethics found a lack of probable cause to support the allegations made and, accordingly, dismissed the Complaints. The Commission on Ethics found, after a preliminary investigation, that there was such a lack of evidence there would be no purpose served by conducting an evidentiary hearing. Therefore, it is my recommendation that the Board of County Commissioners reimburse Commissioner Morris for such attorney's fees and legal costs as the Board finds to be reasonable under the circumstances of the case.

We have reviewed the invoices submitted by the attorneys who represented Commissioner Morris. The amounts appear reasonable. Authorization is requested to pay the invoices in the amounts shown thereon. Authorization is also requested for the County Manager to execute any necessary budget transfer to transfer money from contingency reserves into the appropriate budget line in order to make such payment.

Please let me know if I can be of further assistance in any way or if you have any questions relating to this matter.

RAM/gn

Attachments

Public Reports (5)

Messer, Caparello & Self P.A. Invoice

Frederick Nelson, Esquire Invoice

⁴ *Chavez v. City of Tampa*, 560 So. 2d 1214 (Fla. 2d DCA 1990). In *Chavez*, a city counsel member, acting in her capacity as a citizen, brought a rezoning petition to the city counsel. On advice from the city attorney, she initially abstained from voting on her petition. However, when the vote tied, she decided to vote and, in doing so, broke the tie so that the motion passed. An ethics complaint was filed but the charges dismissed. The counsel woman sought reimbursement from the city for her legal expenses which the city refused to pay. The Second District affirmed the city's decision finding that she failed to satisfy both prongs of the reimbursement test. The Court found that she did not cast the vote to serve a public purpose but to "advance her own private pecuniary interests." As such, there was no authority for the city to reimburse the counsel woman's defense expenses.

DATE FILED

APR 28 2004

**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

COMMISSION ON ETHICS

In re RANDALL C. MORRIS,)

Respondent.)
_____)

Complaint No. 02-178

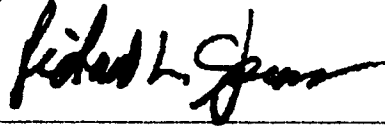
PUBLIC REPORT

Based on the preliminary investigation of this complaint and on the recommendation of the Commission's Advocate, the Commission on Ethics finds that there is no probable cause to believe the Respondent, as a Seminole County Commissioner, violated Section 112.313(6), Florida Statutes, by entering into an improper agreement with John Pfeiffer which assured that Mr. Pfeiffer's company would be awarded a County contract without going through the necessary bid process; finds that there is no probable cause to believe the Respondent violated Section 112.313(7)(a), Florida Statutes, by retaining John Pfeiffer as a paid advisor for the County's bus shelter project and entering into an agreement with Mr. Pfeiffer that would assure that Mr. Pfeiffer's company would be awarded the contract without going through the necessary bid process; finds that there is no probable cause to believe the Respondent violated Section 112.313(8), Florida Statutes, by sharing County information not available to the general public with John Pfeiffer regarding the County's bus shelter project so that Mr. Pfeiffer's company would have an advantage over other companies interested in the project; and finds that there is no probable cause to believe the Respondent violated Section 112.3143(3)(a), Florida Statutes, by voting to accept requests for proposals and voting to approve certain proposals for the award of the County's bus shelter project after privately retaining John Pfeiffer as a paid advisor on the project and privately agreeing to award Mr. Pfeiffer's company the contract; as alleged in this complaint.

Accordingly, this complaint is dismissed with the issuance of this public report, which shall include the investigative report of the matter.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on April 23, 2004.

April 28, 2004
Date



Richard L. Spears
Chair

cc: Mr. Frederick H. Nelson, Attorney for Respondent
Mr. Mark Herron, Attorney for Respondent
Mr. Craig Bailey, Complainant
Mr. James H. Peterson, III, Commission Advocate

DATE FILED

'APR 28 2004'

COMMISSION ON ETHICS

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re RANDALL C. MORRIS,)
)
 Respondent.)
_____)

Complaint No. 02-179

PUBLIC REPORT

Based on the preliminary investigation of this complaint and on the recommendation of the Commission's Advocate, the Commission on Ethics finds that there is no probable cause to believe the Respondent, as a Seminole County Commissioner, violated Section 112.3143(3)(a), Florida Statutes, by voting to approve an amendment and re-zoning for property on Red Bug Road in which his business associate, Jim Stelling, represented the applicant, as alleged in this complaint.

Accordingly, this complaint is dismissed with the issuance of this public report, which shall include the investigative report of the matter.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on April 23, 2004.

April 28, 2004
Date

Richard L. Spears

Richard L. Spears
Chair

- cc: Mr. Frederick H. Nelson, Attorney for Respondent
Mr. Mark Herron, Attorney for Respondent
Ms. Annette G. Russell, Complainant
Mr. James H. Peterson, III, Commission Advocate

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

DATE FILED
APR 28 2004
COMMISSION ON ETHICS

In re RANDALL C. MORRIS,)
)
Respondent.)
)
_____)
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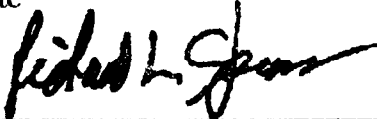
Complaint No. 02-181

PUBLIC REPORT

Based on the preliminary investigation of this complaint and on the recommendation of the Commission's Advocate, the Commission on Ethics finds that there is no probable cause to believe the Respondent, as a Seminole County Commissioner, violated Section 112.3143(3)(a), Florida Statutes, by voting on November 26, 2002, on agenda items 54 and 58, in which his business partner, Kenneth Wright, received a special gain or loss, as alleged in this complaint.

Accordingly, this complaint is dismissed with the issuance of this public report, which shall include the investigative report of the matter.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on April 23, 2004.

April 28, 2004
Date

Richard L. Spears
Chair

cc: Mr. Frederick H. Nelson, Attorney for Respondent
Mr. Mark Herron, Attorney for Respondent
Ms. Wendy Saliga, Complainant
Mr. James H. Peterson, III, Commission Advocate

Law Offices of Frederick H. Nelson, P.A.
1110 Douglas Avenue
Suite 1002
Altamonte Springs, FL 32714

Invoice submitted to:
Mr. Randy Morris

<i>Invoice Date</i>	<i>Invoice Number</i>	<i>Last Bill Date</i>
July 02, 2004	33	

Professional Services

		<u>Hours</u>	<u>Amount</u>
2/5/2003	FHN Open and categorize new file	0.50	150.00
2/13/2003	FHN Receive and review facsimile from Mr. Randy Morris.	0.10	30.00
2/27/2003	FHN Receive and review five FEC Complaints.	1.70	510.00
8/8/2003	FHN Telephone calls to and from FEC investigator Mr. Keith Powell regarding scheduling conference.	0.20	60.00
8/19/2003	FHN Telephone calls to and from Mr. Randy Morris regarding scheduling conference with FEC investigator.	0.30	90.00
	FHN Docketing conference with Mr. Randy Morris and FEC investigator Mr. Keith Powell.	0.20	60.00
	FHN Reviewing cases and statutes regarding FEC violations.	3.70	1,110.00
8/22/2003	SEN Telephone calls to and from Inspector Keith Powell regarding conference.	0.10	1.80
	FHN Review file and prepare for conference with Mr. Randy Morris.	1.40	420.00
8/25/2003	FHN Prepare for and attend conference with Mr. Randy Morris.	2.20	660.00
8/26/2003	SEN Preparing exhibits for conference with inspector Keith Powell.	0.50	9.00
8/28/2003	FHN Second letter to attorney Steve Lee.	0.30	90.00
	FHN Letter to attorney Steve Lee.	0.30	90.00

Mr. Randy Morris

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			<u>Hours</u>	<u>Amount</u>
8/28/2003	FHN	Receive and review letter from attorney Steve Lee.	0.20	60.00
	FHN	Telephone call from Mr. Randy Morris regarding documents and litigation strategy.	0.50	150.00
9/3/2003	FHN	Telephone calls to and from Mr. Randy Morris regarding documents and update on status.	0.30	90.00
	FHN	Review file and prepare for conference with Mr. Randy Morris and Mr. Keith Powell.	1.10	330.00
9/4/2003	FHN	Receive and review additional documents from Mr. Randy Morris.	0.30	90.00
9/7/2003	FHN	Review file and prepare for conference with Mr. Randy Morris and FEC investigator.	0.80	240.00
	SEN	Preparing file for conference with investigator Keith Powell and Mr. Randy Morris.	0.60	10.80
9/8/2003	FHN	Memorandum to file regarding filing documents.	0.30	90.00
	FHN	Prepare for and attend conference with Mr. Randy Morris and Mr. Keith Powell.	2.40	720.00
9/16/2003	FHN	Review file and prepare for drafting Affidavits.	0.70	210.00
	FHN	Initial drafting of Affidavits.	2.30	690.00
9/24/2003	FHN	Redrafting of Affidavits.	1.70	510.00
9/25/2003	FHN	Redrafting of Affidavits.	2.20	660.00
	FHN	Telephone calls to and from Mr. Randy Morris regarding Affidavits.	0.20	60.00
9/26/2003	SEN	Preparing facsimile to Mr. Randy Morris.	0.20	3.60
	FHN	Telephone calls to and from Mr. Randy Morris regarding Affidavits.	0.40	120.00
	FHN	Telephone call to Mr. Keith Powell regarding Affidavits.	0.10	30.00
	SEN	Sending facsimile of Affidavits to Mr. Randy Morris.	0.10	1.80
10/3/2003	FHN	Telephone call to Mr. Randall Morris regarding status of Affidavits.	0.10	30.00
10/6/2003	FHN	Telephone call to Mr. Keith Powell regarding status of Affidavits.	0.20	60.00
	FHN	Telephone call to Mr. Randall Morris regarding status of Affidavits.	0.40	120.00
12/1/2003	FHN	Receive and review letter from Mr. Keith Powell.	0.20	60.00

Mr. Randy Morris

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			<u>Hours</u>	<u>Amount</u>
12/1/2003	FHN	Telephone call to Mr. Randy Morris regarding status of case.	0.10	30.00
	FHN	Telephone call to Mr. Keith Powell regarding status of case.	0.10	30.00
12/2/2003	FHN	Telephone calls to and from Mr. Randy Morris regarding status of affidavits.	0.20	60.00
	FHN	Telephone call to Mr. Keith Powell regarding status of affidavits.	0.10	30.00
12/8/2003	SEN	Preparing update of file.	0.20	3.60
12/18/2003	FHN	Telephone calls to and from Mr. Randy Morris regarding edits to affidavits.	0.20	60.00
	FHN	Receive and review facsimile from Mr. Randy Morris.	0.30	90.00
	FHN	Review file and prepare for editing of affidavits.	0.70	210.00
1/9/2004	FHN	Telephone calls to and from Mr. Randy Morris regarding edits to affidavits.	0.40	120.00
	FHN	Telephone call to Mr. Keith Powell regarding affidavits.	0.10	30.00
	FHN	Review file and prepare for redrafting affidavits.	0.70	210.00
1/13/2004	SEN	Preparing Affidavits.	0.30	5.40
	SEN	Travel to deliver documents.	0.60	10.80
	SEN	Preparing letter to Mr. Randall Morris.	0.10	1.80
1/23/2004	FHN	Receive and review letter from attorney Steve Lee.	0.20	60.00
1/26/2004	FHN	Telephone calls to and from attorney Steve Lee regarding drafts of Affidavits.	0.20	60.00
	FHN	Telephone calls to and from Mr. Randy Morris regarding drafts of Affidavits.	0.30	90.00
	FHN	Letter to attorney Steve Lee.	0.30	90.00
1/27/2004	FHN	Telephone call from Mr. Keith Powell regarding Affidavits.	0.10	30.00
1/29/2004	FHN	Telephone call from Mr. Randy Morris regarding drafts of Affidavits.	0.40	120.00
1/30/2004	FHN	Telephone call to Mr. Keith Powell regarding Affidavits.	0.10	30.00
2/6/2004	SEN	Preparing Affidavits supporting Commissioner Randy Morris.	0.70	12.60
	SEN	Travel to deliver documents.	0.60	10.80

Mr. Randy Morris

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		<u>Hours</u>	<u>Amount</u>
3/8/2004	FHN Telephone call from Mr. Randy Morris regarding Report.	0.40	120.00
3/9/2004	FHN Telephone call from Mr. Randy Morris regarding Ethics Report of Investigation.	0.40	120.00
3/10/2004	FHN Receive and review Ethics Report of Investigations.	1.10	330.00
3/11/2004	SEN Preparing update of file.	0.30	5.40
3/12/2004	FHN Letter to Mr. Randy Morris.	0.30	90.00
	SEN Preparing letter to Mr. Randy Morris.	0.10	1.80
	FHN Telephone call to Mr. Randy Morris regarding Ethics Report of Investigations.	0.10	30.00
3/16/2004	FHN Telephone calls to and from Mr. Randy Morris regarding Ethics Report of Investigations.	0.60	180.00
3/17/2004	FHN Telephone calls to and from Mr. Randy Morris regarding Ethics Report of Investigations.	0.50	150.00
3/19/2004	FHN Telephone calls to and from Mr. Randy Morris regarding investigation.	0.30	90.00
3/22/2004	FHN Telephone calls to and from Mr. Randy Morris regarding investigation.	0.30	90.00
	SEN Preparing update of file.	0.20	3.60
3/24/2004	SEN Sending facsimile of letter to Mr. Randy Morris.	0.10	1.80
	SEN Sending facsimile of letter to Mr. Keith Powell.	0.10	1.80
	SEN Preparing letter and facsimile to Mr. Keith Powell and Mr. Randy Morris.	0.50	9.00
3/29/2004	FHN Receive and review Advocate's Recommendations.	1.10	330.00
	FHN Receive and review facsimile from Mr. Randy Morris.	0.10	30.00
	FHN Telephone calls to and from Mr. Randy Morris regarding Advocate's Recommendations.	0.50	150.00
3/30/2004	FHN Redrafting of Contact Sheet.	0.20	60.00
	FHN Telephone call to attorney Mark Herron regarding Advocate's Recommendations.	0.10	30.00
4/19/2004	FHN Receive and review letter from attorney Mark Herron with attachment.	0.40	120.00
	FHN Letter to attorney Mark Herron.	0.30	90.00

Mr. Randy Morris

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			<u>Hours</u>	<u>Amount</u>
4/19/2004	FHN	Receive and review documentation and letters from attorney Mark Herron.	0.40	120.00
4/20/2004	SEN	Preparing update of file.	0.20	3.60
4/24/2004	FHN	Telephone calls to and from Mr. Randy Morris regarding hearing.	0.10	30.00
4/26/2004	FHN	Telephone calls to and from Mr. Randy Morris regarding hearing.	0.80	240.00
5/3/2004	FHN	Receive and review Public Reports on Complaints.	0.30	90.00
6/24/2004	FHN	Telephone calls to and from Mr. Randy Morris regarding status.	0.30	90.00
For professional services rendered			43.90	\$11,619.00

Additional Charges :

			<u>Qty/Price</u>	
2/13/2003	E104 Facsimile	Receive and review facsimile from Mr. Randy Morris.	1 1.00	1.00
8/26/2003	E101 Copying	Preparing exhibits for conference with inspector Keith Powell.	83 0.25	20.75
9/7/2003	E101 Copying	Preparing file for conference with investigator Keith Powell and Mr. Randy Morris.	12 0.25	3.00
9/26/2003	E104 Facsimile	Sending facsimile of Affidavits to Mr. Randy Morris.	56 1.00	56.00
12/18/2003	E104 Facsimile	Receive and review facsimile from Mr. Randy Morris.	5 1.00	5.00
1/13/2004	E108 Postage	Sending Affidavits.	1 3.85	3.85
	E108 Postage	Sending letter to Mr. Randall Morris.	1 0.37	0.37
	E101 Copying	Preparing letter to Mr. Randy Morris.	1 0.25	0.25
	E109 Local travel	Travel to deliver documents - mileage.	1 4.20	4.20
	E101 Copying	Preparing Affidavits.	30 0.25	7.50

Mr. Randy Morris

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	<u>Qty/Price</u>	<u>Amount</u>
2/6/2004 E101 Copying	238	59.50
Preparing Affidavits supporting Commissioner Randy Morris.	0.25	
E108 Postage	1	3.85
Priority Mail to Mr. Keith Powell.	3.85	
E109 Local travel	1	4.20
Travel to deliver documents - mileage.	4.20	
3/12/2004 E101 Copying	1	0.25
Preparing letter to Mr. Randy Morris.	0.25	
E108 Postage	1	0.37
Preparing letter to Mr. Randy Morris.	0.37	
3/24/2004 E104 Facsimile	2	2.00
Sending facsimile of letter to Mr. Randy Morris.	1.00	
E104 Facsimile	2	2.00
Sending facsimile of letter to Mr. Keith Powell.	1.00	
E101 Copying	3	0.75
Preparing letter and facsimile to Mr. Keith Powell and Mr. Randy Morris.	0.25	
E108 Postage	1	0.37
Preparing letter and facsimile to Mr. Keith Powell and Mr. Randy Morris.	0.37	
3/29/2004 E104 Facsimile	4	4.00
Receive and review facsimile from Mr. Randy Morris.	1.00	
Total costs		<u>\$179.21</u>
Total amount of this bill		<u><u>\$11,798.21</u></u>

Messer, Caparello & Self, P.A.
 Post Office Box 1876
 Tallahassee, Florida 32302-1876
 Telephone (850) 222-0720
 FEI 59-2921100

Mark Herron

RANDELL C. MORRIS
 770 BLADES COURT
 WINTER SPRINGS FL 32708

Page: 1
 May 05, 2004
 Account No: 1022-11647
 Statement No: 15613

Attn: RANDALL C. MORRIS

ETHICS COMPLAINTS

Fees

		Hours	
04/01/2004			
MH	Prepared draft response to Advocate's Recommendation in Complaint No 02-182; reviewed and analyzed law regarding same.	2.50	
04/02/2004			
MH	Conferenced by telephone with Randy Morris regarding draft response to Advocate's Recommendation; revised same.	0.40	
04/19/2004			
MH	Received email memorandum from Rick Nelson regarding status of response to Complaint No 02-182; prepared email memorandum to Rick Nelson regarding same; received telephone call from Randy Morris regarding probable cause hearing and strategies.	0.40	
04/22/2004			
MH	Prepared for probable cause hearing; outlined presentation on complaints.	1.80	
04/23/2004			
MH	Prepared for and attended probable cause hearing; conferred with Randy Morris regarding same.	1.30	
04/28/2004			
MH	Reviewed public reports dismissing complaints; reviewed signed letter to Randy Morris regarding same.	0.20	
	For Current Services Rendered	6.60	1,155.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
MARK HERRON	6.60	\$175.00	\$1,155.00
Total Current Work			1,155.00
Balance Due			<u>\$1,155.00</u>
Please Remit			<u>\$1,155.00</u>

**ALL INVOICES DUE UPON RECEIPT.
 THANK YOU FOR YOUR PROMPT PAYMENT.**