

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CIVIL ACTION**

WILLIAM G. GAY, and
CATHY P. MOORE,

Plaintiffs,

v.

Case No. 16-004836-CI

The CITY OF MADEIRA BEACH, a
Municipal Government of the State of
Florida, TRAVIS PALLADENO, TERRY LISTER,
NANCY HODGES and HOUSH GHOVAEE,

Defendants.

**PLAINTIFFS' PETITION FOR ISSUANCE OF
ALTERNATIVE WRIT OF MANDAMUS AND FOR ACCELERATED HEARING**

COMES NOW PLAINTIFFS, WILLIAM G. GAY and CATHY P. MOORE, by and through their undersigned counsel and pursuant to Rule 1.630 of the Florida Rules of Civil Procedure and section 119.11(1) of the Florida Statutes (2016), and petitions this Honorable Court for issuance of its Alternative Writ of Mandamus and accelerated hearing, and in support thereof states:

Facts On Which Plaintiff Relies for Relief

On September 9, 2016, PLAINTIFFS filed their Second Amended Complaint For Declaratory Relief and Writ of Mandamus (“Second Amended Complaint”) seeking to enforce compliance with Article I, section 24(a) of the Florida Constitution and Chapter 119 of the Florida Statutes (2016)(commonly known as the Florida Public Records Law) against the DEFENDANTS, the City of Madeira Beach (“CITY”), TRAVIS PALLADENO

(“PALLADENO”), TERRY LISTER (“LISTER”), NANCY HODGES (“HODGES”), and HOUSH GHOVAEE (“GHOVAEE”).

Count 4 of the Second Amended Complaint seeks issuance of a writ of mandamus. The facts upon which Plaintiff relies for relief are set forth in paragraphs 1 through 8 and 41-85 of the Second Amended Complaint, the contents of which are incorporated herein by reference.

Request for the Relief Sought

The request for relief sought by mandamus is contained on page 15 of the Second Amended Complaint. PLAINTIFFS have requested that this Court (a) Issue an alternative writ of mandamus directing DEFENDANTS to produce the records requested by the PLAINITFFS or appear before this Court and show cause why DEFENDANTS have not complied with Florida law and should be ordered by this Court to do so; (b) Provide in said alternative writ an immediate, accelerated hearing date upon which DEFENDANTS shall be required to make any showing of cause why this Court’s peremptory writ should not issue.

Argument in Support of Petition with Citations of Authority

Pursuant to Rule 1.630 of the Florida Rules of Civil Procedure, “If the complaint shows a prima facie case for relief, the court shall issue ... an alternative writ in mandamus that may incorporate the complaint by reference only” which writ is to be served in the manner prescribed by law. *See Gilliam v. State*, 996 So.2d 956 (Fla. 2d DCA 2008)(if petition states a prima facie case for relief, trial court must issue alternative writ, which “is essentially an order to show cause why the requested relief should not be granted”); *Radford v. Brock*, 914 So.2d 1066, 1067-68 (Fla. 2d DCA 2005)(same).

PLAINTIFFS submit that, through a detailed pleading with exhibits, they have set forth a prima facie case that DEFENDANTS, the CITY, and the elected officials of the CITY have

unlawfully withheld public records within the meaning of Article I, section 24(a) of the Florida Constitution and sections 119.07(1)(a) and 119.011(12) of the Florida Statutes (2016). As such, the DEFENDANTS are required to comply with the Public Records Laws by making available to the PLAINTIFFS the records it has requested relating to the DEFENDANTS' recent approval by the CITY, PALLADENO, HUGHES, LISTER, and GHOVAEE for the reimbursement for legal fees and other costs of current and former public officials and employees of the CITY which are to be expended in defense of ethics complaints filed against them.

Producing public records is a clear, ministerial, non-discretionary legal duty, and mandamus is the appropriate remedy for non-performance of this duty. *See Smith v. State*, 696 So.2d 814, 816 (Fla. 2d DCA 1997). Corporations are subject to being compelled to perform their legal duties by way of writ of mandamus. *See Soreno Hotel Co. v. State ex rel. Otis Elevator Co.*, 107 Fla. 195, 144 So. 339 (1932)(writ of mandamus properly directed to corporation to compel performance of legal duty to produce records for inspection);

Plaintiff further submits that it is entitled to an accelerated hearing. Section 119.11(1) of the Florida Statutes provides: "Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases." "Immediate" means immediate. *See Matos v. Office of the State Attorney for the Seventeenth Judicial Circuit*, 80 So.3d 1149 (Fla. 4th DCA 2012); *Woodfaulk v. State*, 935 So.2d 1225, 1227 (Fla. 5th DCA 2006).

A proposed alternative writ of mandamus is attached hereto as Exhibit A.

WHEREFORE, PLAINTIFFS respectfully request that this Honorable Court issue its Alternative Writ of Mandamus as requested in the Second Amended Complaint and herein,

containing an immediate hearing date whereupon DEFENDANTS are required to show cause why this Court's peremptory writ should not issue.

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I have filed this Second Amended Complaint on September 12, 2016 using Florida's E-Filing Portal, which will electronically serve a copy on Andrew J. Salzman, Esq. and Jeffrey Jensen, Esq. of Unice, Salman, Jensen, P.A., 1815 Little Road, Trinity, FL 34655 at service@unicesalzman.com and asalzman@unicesalzman.com.

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Attorneys for Plaintiffs

EXHIBIT A

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_____ /

ALTERNATIVE WRIT OF MANDAMUS

THIS CAUSE having come before the Court on September ____, 2016 on the PLAINTIFFS' Petition for Issuance of Alternative Writ of Mandamus and for Accelerated Hearing, and the Court, having considered the allegations contained in Paragraphs 1 through 8 and 41-85 of the PLAINTIFFS' Second Amended Complaint For Declaratory Relief and Writ of Mandamus ("Second Amended Complaint"), which allegations and prayers are hereby incorporated herein by reference, and pursuant to Rule 1.630 of the Florida Rules of Civil Procedure, the Court finds that the PLAINTIFFS have stated a prima case for relief regarding the right to require the DEFENDANTS to provide the records of the City of Madeira Beach, and the DEFENDANTS requested in said Second Amended Complaint, to wit: the Coverage Letters which have not been delivered to the PLAINTIFFS and Ethics Complaints as more specifically described in the Second Amended Complaint.

THEREFORE DEFENDANTS, the City of Madeira Beach, PALLADENO, LISTER HUGHES, and GHOVAEE, shall provide the PLAINTIFFS forthwith copies of the requested records or IN THE ALTERNATIVE SHALL APPEAR before this Court, Jack Day, Circuit Judge of the Sixth Judicial Circuit in and for Pinellas County, Florida presiding, at Pinellas County Courthouse, 545 1st Ave. N, St Petersburg FL, on _____, 2016 at _____ a.m./p.m. and then and there to SHOW CAUSE by what authority DEFENDANTS are not required to disclose the said records to the PLAINTIFFS and why a Peremptory Writ of Mandamus should not issue.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida this _____ day of September, 2016.

Jack Day
Circuit Court Judge