

agenda for that meeting, the Commission was scheduled to vote on whether to authorize the CITY to pay the legal fees and costs for SHONTZ, DE SANTIS, MCGRADY, and CRAWFORD to defend the Ethics Complaints.

51. Unbeknownst to the public, the City Attorney had disclosed the contents of the Ethics Complaints to PALLADENO, LISTER, HODGES, and GHOVAEE in individual meetings or discussions prior to the August 9, 2016 Commission meeting. The terms of the Coverage Letters were also discussed in those individual meetings. Thus, in addition to providing non public information to the PALLADENO, LISTER, HODGES, and GHOVAEE, the City Attorney acted as a conduit between them in order for them to decide to authorize the reimbursement of fees.

52. When the Memo was disclosed in the Agenda Packet, PLAINTIFFS, via their counsel, requested the CITY to provide copies of the Ethics Complaints identified in the Memo as well as the Coverage Letters in accordance with §119.07 Fla. Stat. and Chapter 119 Fla. Stat., (the “Public Records Act”). **(Exhibit 8)**

53. A public record is defined as follows:

“Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency

§119.011(12) Fla. Stat.

54. The Public Records Act requires that

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

§119.07(1)(a) Fla. Stat.

55. The City Attorney advised the PLAINTIFFS that the Ethics Complaints were exempt from disclosure as public records based on §112.324 Fla. Stat. and refused to produce them in accordance with PLAINTIFFS' demand. (**Exhibit 8**)

56. In fact, the Ethics Complaints were not exempt from disclosure and were public records when they were held by the City and/or City Attorney after delivery by SHONTZ, DE SANTIS, MCGRADY, and CRAWFORD and used in connection with the transaction of public business of the CITY.

57. §112.324 Fla. Stat. provides only that ethics complaints that are in the possession of the ethics commission or its agents are exempt.

(2)(a) The complaint and records relating to the complaint or to any preliminary investigation **held by the commission or its agents**, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Written referrals and records relating to such referrals **held by the commission or its agents**, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission or its agents, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

58. Thus, once the Ethics Complaints were delivered to the CITY and the City Attorney by the persons against whom the complaints were filed, they became public records since the Ethics Complaints requested were not those “held by the [Ethics] commission or its agents.”

59. Similarly, when the Coverage Letters were delivered to the CITY they became public records subject to the requirements of Florida Statutes Chapter 119.

60. The CITY and the City Attorney refused to provide the Coverage Letters<sup>4</sup> as well, stating that they were exempt under §112.324 Fla. Stat. since the Coverage Letters “listed the details” of the Ethics Complaints. (**Exhibit 9**)

61. The CITY, therefore, violated the Public Records Act by failing to produce the requested records, i.e. the Ethics Complaints and the Coverage Letters.

62. PLAINTIFFS are entitled to be compensated for reasonable attorneys’ fees pursuant to Chapter 119 Fla. Stat. including but not limited to § 119.071(1)(d)(2) Fla. Stat. because of the failure of the CITY to comply with the Public Records Act.

63. PLAINTIFFS request that this Honorable Court grant an expedited hearing pursuant to §119.11 Fla. Stat., which states that “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.”

**WHEREFORE**, PLAINTIFFS, respectfully request 1) that the Court determine that the CITY has violated The Public Records Act as a result of its refusal to provide the Ethics Complaints to PLAINTIFFS as set forth herein, 2) that the Court determine that the CITY has violated the Public Records Act for its refusal to provide the Coverage Letters to PLAINTIFFS as set forth herein, 3) that the Court direct the DEFENDANTS to produce the public records i.e. the Coverage Letters to and Ethics Complaints requested herein, 4) that the Court grant PLAINTIFFS an immediate hearing on this matter pursuant to §119.11 Fla. Stat., and 5) that the Court order the CITY to reimburse the PLAINTIFFS their reasonable attorneys’ fees as set forth in § 119.071(1)(d)(2) Fla. Stat. as well as costs of this action.

### **COUNT 3**

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<sup>4</sup> As a result of the filing of this action, the CITY has provided copies of some of the Coverage Letters. PLAINTIFFS are unable to ascertain whether all of the Coverage Letters requested have been provided.

**VIOLATION OF THE SUNSHINE LAW:**  
**COMMISSIONERS MADE DECISION TO DEFEND ETHICS COMPLAINTS**  
**BASED ON NONPUBLIC COMMUNICATIONS AND INFORMATION**

64. PLAINTIFFS incorporate paragraphs 1 through 8 and 41 through 63 as though fully set forth herein.

65. In the Memo, the City Attorney opined that public employees are entitled to be reimbursed for legal fees and settlements for “civil actions” provided two mandatory preconditions are present. The complained of actions must meet “the two-prong test of (1) arising out of or in connection with the performance of official duties and (2) serving a public purpose.” (Memo, **Exhibit 7 page 5**)

66. Thus, in order for SHONTZ, FRANK DE SANTIS, CHERYL MCGRADY, and SHANE CRAWFORD to be entitled to be reimbursed for legal fees, the Commission was required to determine that the allegations of the Ethics Complaints were the result of actions that arose out of or were in connection with the performance of official duties and (2) that those actions served a public purpose

67. In private meetings or discussions with PALLADENO, LISTER, HODGES and GHOVAEE, the City Attorney disclosed the details of the allegations of the Ethics Complaints so that those members of the Commission could make a decision to pay for the legal fees of SHONTZ, FRANK DE SANTIS, CHERYL MCGRADY, and SHANE CRAWFORD at the upcoming Commission meeting.

68. At the August 9, 2016 Commission meeting, the City Attorney discussed the Memo with the Commission members but did not discuss the details of the allegations in the Ethics Complaints and the Coverage Letters which he had previously disclosed to PALLADENO, LISTER, HODGES and GHOVAEE .

69. The City Attorney advised PALLADENO, LISTER, HODGES and GHOVAEE, that they could only base the decision to pay for the legal defense of the Ethics Complaints if they determined that the allegations in each of the Ethics Complaints **arose out of or in connection with the performance of his or her official duties and the duties served a public purpose.** (Emphasis supplied)

70. PALLADENO, LISTER, HODGES and GHOVAEE, having been briefed on the contents of the Ethics Complaints and the Coverage Letters then voted unanimously to approve the payment of legal fees<sup>5</sup>.

71. At the August 9, 2016 Commission meeting, neither the City Attorney nor PALLADENO, LISTER, HODGES or GHOVAEE discussed the content or details of any of the Ethics Complaints before the vote.

72. Neither the City Attorney nor PALLADENO, LISTER, HODGES or GHOVAEE disclosed that they voted to authorize the payment of legal fees based on private discussions concerning the Ethics Complaints and Coverage Letters which were never disclosed to the public.

73. Neither the City Attorney nor PALLADENO, LISTER, HODGES or GHOVAEE disclosed the facts upon which they determined that the Ethics Complaints “arose out of or in connection with the performance of his or her official duties and that the duties served a public purpose.”

74. It is possible that Ethics Complaints and the Coverage Letters may reveal that the decision to authorize the payment of legal fees on behalf of SHONTZ, FRANK DE SANTIS, CHERYL MCGRADY, and SHANE CRAWFORD was not based on the requirement that the

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<sup>5</sup> Commissioner Poe had been excused from the meeting prior to the discussion and the vote on the payment of legal fees and did not vote on the matter.

reimbursement must be based on Ethics Complaints which “arose out of or in connection with the performance of his or her official duties and that the duties served a public purpose.”

75. The decision to authorize the payment of legal fees by PALLADENO, LISTER, HODGES and GHOVAEE violated the Sunshine Law because it was made outside of a public meeting, **during private meetings or discussions** with the City Attorney, who provided the non public information upon which they based their decision, and also acted as a conduit with those members of the Commission when he advised them about details of the Ethics Complaints.

76. As a result of the Sunshine Law violation, the decision to pay the legal fees for SHONTZ, SANTIS, MCGRADY, and CRAWFORD is invalid and void *ab initio* because “no resolution, rule, or formal action shall be considered binding except as taken or made” at a public meeting. §286.011(1) Fla. Stat.<sup>6</sup>

77. PLAINTIFFS are entitled to be reimbursed their reasonable attorneys’ fees pursuant to the Sunshine Law, including §286.011(4) Fla. Stat.

**WHEREFORE**, PLAINTIFFS, respectfully request 1) that the Court determine that the CITY, PALLADENO, LISTER, HODGES and GHOVAEE have violated The Sunshine Law as a result of making the decision to authorize payment of legal fees based on the facts set forth herein, 2) that the Court determine that the decision to authorize the CITY to pay for the legal fees of SHONTZ, SANTIS, MCGRADY, and CRAWFORD is invalid and void *ab initio*, because it was not decided in a public meeting, and 3) that the Court order the CITY, PALLADENO, LISTER, HODGES and GHOVAEE to reimburse the Plaintiffs their reasonable attorneys’ fees as set forth in the Sunshine Law, including § 286.011(4) Fla. Stat. as well as

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<sup>6</sup> It is unclear whether the vote to approve the payment of legal fees authorized the payment of legal fees on behalf of any other person. If the Court determines that the vote so authorized,, PLAINTIFFS request that the Court determine that authorization to be invalid and void *ab initio* as well.

costs of this action.

**COUNT 4**  
**WRIT OF MANDAMUS**

78. PLAINTIFFS incorporate paragraphs 1 through 8 and 41 through 77 the same as if fully set forth herein.

79. Pursuant to Florida's Constitution and Chapter 119 Fla. Stat., Plaintiffs have a clear legal right to inspect all public records in the possession of DEFENDANTS, CITY, PALLADENO, LISTER, HUGHES and GHOVAEE to which no statutory exemption applies.

80. As custodian of public records, the DEFENDANTS have a mandatory, non-discretionary, and affirmative ministerial duty to provide all non-exempt public records upon request by any person, including the PLAINTIFFS.

81. Defendants have affirmatively refused and failed to comply with the requirements of Florida law with respect to public records in its possession and has provided no cognizable legal reason for its refusal and failure.

82. Plaintiff has no adequate remedy at law to remedy DEFENDANTS' refusal and failure to comply with Florida law.

83. Section 119.11(1) of the Florida Statutes provides that when an action is filed to enforce the Public Records Laws, "the court shall set an immediate hearing, giving the case priority over other pending cases."

84. Plaintiff has retained the undersigned legal counsel to represent it in this matter and is obligated to pay counsel a reasonable fee for their services.

85. Plaintiff is entitled to recover a reasonable attorney's fee and reimbursement of costs incurred in bringing this action under Section 119.12, Florida Statutes.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- a) Issue an alternative writ of mandamus directing DEFENDANTS to produce the records requested by the PLAINTIFFS or appear before this Court and show cause why they have not complied with Florida law and should not 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;
- c) Issue its peremptory writ directing DEFENDANTS to make all records in their possession, custody or control that are responsive to PLAINTIFFS' request for public records immediately available
- d) Enter its Order and Judgment awarding Plaintiff the reasonable attorney fees and costs incurred in bringing this action; and
- e) Provide any such other and further relief as this Court deems just and proper.

#### **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](mailto:service@unicesalzman.com) and [asalzman@unicesalzman.com](mailto:asalzman@unicesalzman.com).

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