

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

CASE NO. 4D12-4325

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

Appellant,

vs.

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,

Appellees/Plaintiffs,

PALM BEACH COUNTY, a political subdivision,

Appellee/Defendant, and

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

Appellee/Intervenor.

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Inspector General's Motion for Rehearing En Banc

SHERYL STECKLER, in her official capacity as Inspector  
General of Palm Beach County (the IG), pursuant to Rule 9.331,

Florida Rules of Appellate Procedure, moves this Honorable Court for rehearing en banc, and states:

**Background**

1. Following a series of high profile criminal convictions of elected county and municipal officials, a Palm Beach County Grand Jury recommended, among other things, that a position for an independent inspector general be created.

2. In November, 2010, the county's voting public was presented an ethics initiative ballot question proposed by the Appellee Board of County Commissioners (BOCC), asking whether the county Charter should be amended to require "an independent Commission on Ethics funded by the County Commission, and an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?" If a majority approved, the requirement would also apply to each municipal government where a majority of the municipal voters approved the amendment.

3. The question was approved by over 72% of the voters, and a majority in each municipality.

4. The resulting IG Charter provision requires the hiring of an inspector general: who is not selected by the Appellee BOCC; who is provided a term contract; and who is entitled to a minimum specified funding level. It also requires the

establishment of "an Office of Inspector General to provide independent oversight" of governmental entities in the county.

5. The resulting IG Ordinance, which became effective on June 1, 2011, provides the IG certain authority, including but not limited to:

a. "The inspector general shall have the power to appoint, employ, and remove such assistants, employees and personnel, and establish personnel procedures as deemed necessary for the efficient and effective administration of the activities of the office of inspector general." Section 2-426(2);

b. "The inspector general may exercise any of the powers contained in this article upon his or her own initiative." Section 2-423(7);

c. "...the inspector general shall have the power to subpoena witnesses, administer oaths, and require the production of documents....In the case of a refusal to obey a subpoena served to any person, 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);

d. "This article is enforceable by all means provided by law, including seeking injunctive relief in the Fifteenth Judicial Circuit Court in and for Palm Beach County." Section 2-431; and

e. "The inspector general shall have the power to appoint, employ, and remove such assistants, employees and personnel . . . as deemed necessary for the efficient and effective administration of the activities of the office of inspector general." Section 2-426(2)

6. The IG Ordinance also requires officials and employees of the county and municipal governments, and on contractors,

subcontractors, and sub-subcontractors of these governments the obligation to:

"fully cooperate with the inspector general in the exercise of the inspector general's functions, authority and powers. Such cooperation shall include, but not be limited to providing statements, documents, records and other information, during the course of an investigation, audit or review. The inspector general may obtain sworn statements, in accordance with Florida Statutes, of all persons identified in this subsection as well as other witnesses relevant to an investigation, audit or review."

Section 2-423(1).

7. In mid-November 2011, 15 of the County's municipalities filed suit, challenging both their obligation to contribute to the IG's funding and the Ordinance's methodologies for determining the IG's funding. They named and served only the Appellee BOCC, not the IG, as a defendant. They also refused to pay their quarterly bills for their share of the IG's funding. The suit contains four basic claims:

a. Various arguments alleging that it is illegal to require them to pay anything toward the IG's funding.

b. A challenge to the formula in the Ordinance for determining the IG's annual "minimum" funding.

c. A challenge to the procedures in the Ordinance for providing the IG with increased "minimum" funding in any year.

d. A challenge to the procedures in the Ordinance for the IG to obtain supplemental funding during the course of any year.

The Appellee BOCC's reaction to the assertion that it is illegal to require the municipalities to contribute to IG funding is that even if this is so, the BOCC is only required to pay its current level of IG funding. This places the IG's minimum funding, as specified in the Charter and the Ordinance, directly at risk.

Municipal claims b, c, and d above are all directed toward lowering their costs for IG funding. However, because municipal costs for IG funding are proportionate to those of the Appellee BOCC, if the municipalities prevail with any of these claims the funding obligations of the BOCC will also be proportionately reduced, and the IG is the only party who would suffer financial loss.

8. Shortly after the filing of the suit, the Palm Beach County Clerk and Comptroller, who claims to be a "neutral party," moved to intervene and all parties agreed to her intervention.

9. Concurrently, the Clerk advised the County Attorney that unless the Appellee BOCC agreed to fund any deficit in the OIG budget resulting from the non-payment by the suing municipalities, and further agreed to refund any expenditures of funds submitted by paying municipalities in the event the municipalities prevailed in their lawsuit, the Clerk would

immediately cease billing all municipalities in the county and would prohibit the expenditure of any municipal funds by the IG.

The Appellee BOCC refused to provide these guarantees to the Clerk, who then ceased billing all municipalities and prohibited the expenditure of any municipal funds.

10. Representatives of the BOCC then advised the IG that she would not be receiving the minimum funding specified in the Charter and IG ordinance, although that funding had already been appropriated for the then current fiscal year. The Appellee BOCC takes the position that the IG's minimum funding is dependent on payment by the municipalities. As a result, although the IG Charter provision has been in effect for over 2 years and the current IG Ordinance for almost 2 years, the IG has never received the minimum funding specified in these laws. *This aspect of this case is the subject of a petition for writ of mandamus presently before this court in related case 4D12-4421.*

11. Within a month of the filing of the complaint, the parties moved to place the case in abeyance in order to engage in dispute resolution proceedings under Chapter 164, Florida Statutes. The abeyance lasted approximately six months, until June 2012.

12. In early June, 2012, the IG filed a motion to intervene in the case. All parties filed pleadings opposing the IG's motion to intervene. The three primary arguments were:

a. That the IG lacks the capacity to sue, so she cannot be a party to any case.

b. That the IG lacks standing to be a party to this case.

c. That even if the IG has both capacity to sue and standing, and in fact is a necessary party" to the case, because the IG requested permission from the circuit court to file pleadings which her opponents claimed would insert "new and complex" issues into the case, the circuit court had discretion to simply deny the IG's motion to intervene.

13. The Appellee BOCC also argued that the Inspector General is required to use the County Attorney in any litigation.

14. Without explanation, the circuit court denied the IG's Motion to Intervene.

15. The instant appeal was timely filed and the IG's motion to expedite was granted.

16. The arguments in the briefs were largely those which had been presented to the trial court. However, during oral argument the Appellee BOCC appears to have added two new assertions, that the IG has never issued a subpoena (which is factually incorrect and not a matter of record in this case) and

that the IG may not even issue a subpoena until after presenting it to the County Attorney for approval.

17. On March 28, 2013, a panel of this Court issued an Order affirming, per curiam and without explanation, the order of the circuit court. Concurrently with the filing of this Motion, the Appellant IG has also filed a Motion for Rehearing or Clarification with this Court.

**Exceptional Importance**

I express a belief, based on a reasoned and studied professional judgment, that for the following reasons the decision in this case is of exceptional importance:

18. This is a case of first impression. Palm Beach County appears to be the first in Florida where the citizens voted to require, in their Charter, an independent inspector general to conduct "independent oversight" of their local governmental operations. The Appellee BOCC, having presented to the voters the question of whether the county should have "an independent inspector general" (ballot question) with the responsibility to provide "independent oversight of" local government operations (resulting charter provision); and having adopted an Ordinance which provides the inspector general the right to "exercise any of the powers contained in this article upon his or her own initiative," require the production of records and testimony,



issue subpoenas, and enforce those subpoenas in court, has now opted to dispute the legality of the entire scheme.

The Appellee BOCC maintains that under the Constitution and laws of the State of Florida, only it may have standing to participate in litigation involving the Ordinance and Charter, even if the IG would be the party most impacted, or the only party impacted, by the result. This extends to excluding the IG from the right to appear in court to challenge even nonpayment by the Appellee BOCC of its mandatory IG funding obligations under the Charter and Ordinance. Such a result would render the mandatory minimum funding requirements in the County Charter and Ordinance illusory and subject to the sole discretion of the Appellee BOCC.

The Appellee BOCC further asserts that, despite the plain language of the Charter and Ordinance, the IG must rely on its attorney to enforce its subpoenas. It seemed to also assert during oral argument that the IG even lacks authority to issue subpoenas without its approval.

The Appellee BOCC's underlying premise seems to be that any Charter or Ordinance provision which would provide the IG the independent standing to appear in court on issues which relate to her rights and duties must be illegal. Simply put, the Appellee BOCC is claiming that the Charter language that it

proposed to the voters, and the Ordinance that it enacted, are illegal.

Unless the IG has the authority to independently appear in court to enforce her rights under, and the requirements of, the Charter and Ordinance and to defend challenges to the requirements of the Charter and Ordinance from any source including the Appellee BOCC, all provisions of the Charter and Ordinance purporting to confer rights on the IG will be rendered ineffectual, and the supposedly mandatory obligations of those governmental entities, officials, employees, and vendors, who the IG is charged with overseeing will become voluntary in nature.

Without the right to independently issue subpoenas and enforce them in court, the IG cannot compel compliance with any request for records or testimony. If the IG must seek approval of, or rely on litigation support from, the Appellee BOCC and its attorney for her subpoenas, the IG is not empowered to conduct "independent oversight." The Appellee BOCC might accommodate the IG when she was seeking evidence regarding municipal matters, but this would be within the discretion of the BOCC, not the IG. Further, if the Appellee BOCC was not inclined to cooperate in an IG investigation of itself, appealing to the BOCC to have its own attorney sue itself would be a futile exercise and would present a conflict.

Nor could the IG comply with the requirement that matters relating to her ongoing investigations or audits remain "confidential" until the investigation or audit had been completed. The confidentiality requirements are imposed by §§112.3188(2) and 119.0713(2), Fla. Stat. and §2-423(10) of the IG Ordinance. Among the purposes of these requirements are to avoid prematurely "tipping off" persons or entities that are subjects of an investigation and who may wish to thwart the IG's access to records or testimony, and to avoid unfairly smearing persons or entities who are the subjects of an investigation with allegations based upon incomplete evidence which is not fully evaluated. Any requirement that the IG share information relating to her ongoing investigations and audits with counsel for the Appellee BOCC, one of the entities the IG "oversees," would conflict with these confidentiality requirements and defeat their purposes.

This challenge involves an issue of first impression relating to the home rule provisions of Art. VIII §1(g), Fla. Const. It is now squarely before this Honorable Court. These issues will remain the matter of uncertainty and dispute until definitively resolved by Florida's courts.

If they are not resolved now, one or more future cases will surely be initiated which will consume more of the scarce

resources of local governments, the trial courts in this circuit, this Honorable Court, and the IG.

Until these issues are resolved, there will be doubt as to whether the requirements of the Charter and Ordinance are mandatory, resulting in uneven and declining compliance, delays in IG investigations and audits, and doubt as to whether the IG is even empowered to provide effective and independent oversight of the local governments. The IG will be unsure of how to proceed in performing her duties under the Charter and Ordinance. Additionally, this doubt will surely affect IG staffing. The IG has attempted to recruit a core group of specialized professionals. However, the longer doubt is allowed to persist as to the viability of the purported powers of her office, the more difficult it will become to recruit and retain such key personnel.

This case is also of exceptional importance because it involves a challenge to the IG's capacity to sue. The IG maintains that as an adult natural person without even an alleged disability, she has the capacity to sue. There is no case law supporting the notion that a natural person without legal disability lacks the capacity to sue. Such a ruling would be precedential. However, such a ruling would have the same effects as a ruling that the IG lacks standing to appear in court to defend her rights under, or to enforce the requirements

of the Charter and Ordinance. This issue is squarely before this Court and can be resolved now.

This case is also of exceptional importance because the Appellees have argued that the circuit judge had the discretion to deny intervention to the IG, even if she is a "necessary party," because the IG requested permission from the circuit court to file pleadings that the Appellees alleged would introduce "new and complex" issues. In response, the IG maintained that the pleadings which she requested permission to file were pleadings that any properly named defendant could have filed without objection. The IG also maintained that, even if she had requested permission to introduce issues that were "new and complex," the denial of a "necessary party's" intervention for that reason is without precedent and would violate the IG's right to due process of law under Art. I §9, Fla. Const. It is important that this Honorable Court rule on this precedential issue in order to instruct future intervenors as to their rights and risks and prevent future litigation involving this issue.

This case is also important because the intervention of the IG is necessary for a full, fair, and definitive resolution of the case below. Many of the plaintiffs' claims would, if successful, also benefit the defendant Appellee BOCC. Only the IG would be financially harmed.

The remaining claim in the case below is that it is illegal to require the Municipalities to contribute anything for IG funding. Even this claim requires IG involvement for a full and fair resolution. That is because the Appellee BOCC claims that, irrespective of whether the Municipalities can be required to pay anything, it (the BOCC) is not required to pay any more than its current "share" which is based on the value of its contracts alone. In essence, the Appellee BOCC is taking the position that the IG is at risk from this claim, and that it (the BOCC) is not at risk. Therefore, IG must be permitted to defend this claim as well.

The Appellee BOCC's position as to the consequences if the Municipalities' prevail on this issue places in question the viability of the Charter requirement that the IG be funded at no less than:

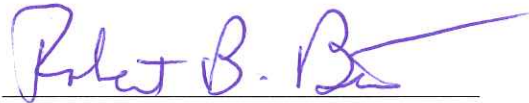
"at minimum in an amount equal to one quarter of one percent of contracts **of the County and all other governmental entities subject to the authority of the Inspector General...**" Section 8.3 (Bold added)

However, the issue of whether the BOCC would be required to provide the full measure of IG funding if the Municipalities are not required to contribute has not been placed before the circuit court. This issue, in turn, raises an issue as to the viability of yet another Charter requirement. If the IG is only to be funded in an amount equal to one quarter of one percent of

the value of the BOCC's contracts, and is not to be provided funding relating to the activities of any of the municipal governmental entities, are those governmental entities still "subject to the authority of the Inspector General"? If so, is the IG required to take resources paid by county taxpayers to oversee county government and divert some of those resources to oversee the conduct of the municipal governments? These additional issues are related to the issue before the circuit court, they require the involvement of the parties currently before the court, and all three issues should be considered and decided together. However, it appears that neither of these additional issues will be presented to the court in the case below unless the IG is permitted to intervene.

Furthermore, without the IG as a party, the validity of the proceedings below are in doubt under a line of Florida Supreme Court cases, including *Santa Rosa County v. Admin. Commission*, 661 So. 2d 1190, 1192-1193 (Fla. 1995)), which hold that it is not even within the constitutional powers of a circuit court to rule in a declaratory judgment action unless there are "antagonistic" interests actually before the court, and unless all "antagonistic" interests are before the court. The limitation in §86.091, Fla. Stat. that "No declaration shall prejudice the rights of persons not parties to the proceedings,"

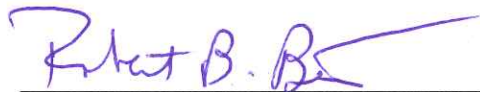
also raises doubt as to the propriety of proceeding without including the IG as a party.



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WHEREFORE, the Inspector General respectfully requests that this Honorable Court grant a rehearing en banc.

Respectfully submitted this 11<sup>th</sup> day of April, 2013,



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**CERTIFICATE OF SERVICE**

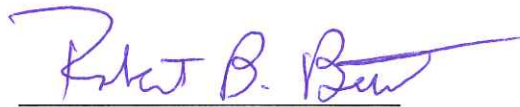
I HEREBY CERTIFY that a copy of the foregoing Inspector General's Motion for Rehearing En Banc has been provided by email this 11th day of April, 2013, to those on the attached service list.

**CERTIFICATE OF E-FILING**

I HEREBY CERTIFY that a copy of the foregoing Inspector General's Motion for Rehearing En Banc has been e-filed this 11th day of April, 2013, pursuant to the requirements of Administrative Order No. 2011-1.

**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the size and style of type used in this Inspector General's Motion for Rehearing En Banc is Courier New 12-point font, in compliance with Fla. R. App. P. 9.210(a)(2).



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