

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

**FINAL PRESENTMENT
OF THE
PALM BEACH COUNTY GRAND JURY**

**INVESTIGATION OF PALM BEACH COUNTY
GOVERNANCE AND PUBLIC CORRUPTION ISSUES**

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Exhibit
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INVESTIGATION OF PALM BEACH COUNTY GOVERNANCE AND PUBLIC CORRUPTION ISSUES

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entities such as the Business Development Board (BDB) and the CVB are not subject to the Florida sunshine or ethics laws.

Since 2006, the county has taken some steps in establishing more effective and transparent oversight of the CVB. Subsequent agreements between Palm Beach County and Discover Palm Beach County, Inc. (d/b/a Palm Beach County Convention and Visitors Bureau) address specific areas including conflict of interest, the formation of new oversight audit and finance committees, travel policy, permissible expenses and reimbursement, performance measures, industry certification, and term limits on independent audit firms and legal counsel. While these post-CVB scandal steps should be acknowledged, there is no county-wide policy regarding other non-profit organizations funded, in whole or in part, by Palm Beach County tax dollars. In addition, the county agreements do not contain forensic audit provisions.

In sum, the Grand Jury finds that the current internal auditor's office and external auditor's function do not have any meaningful anti-fraud roles. Further, the Grand Jury finds that the dependence on the BCC renders them ineffective as prospective anti-fraud players in this county.

EXPANDED ROLE FOR OFFICE OF CLERK/COMPTROLLER

The Grand Jury heard a number of proposals to create or develop a functional watchdog entity for the county. One such proposal involved an expansion of audit services provided by the Office of the Clerk (attached as Exhibit 19). The proposal includes the formal assignment of "inspector general" type responsibilities to the Office of the Clerk through the approval of an amendment to the County Charter by Palm Beach County voters. The components of such a change include the establishment of the Office of the Clerk as the independent auditor for county government.

First, the Grand Jury commends the Office of the Clerk's proactive efforts in establishing an audit services division and the retention of certified fraud auditors. The Grand Jury recognizes the Office of the Clerk's position has institutional and working knowledge of county finances. The Grand Jury also recognizes that the Office of the Clerk's proposal is to expand beyond the office's current record-keeping, auditing and ministerial duties.

The Grand Jury also evaluated the Office of the Clerk's proposal for collaboration of the Office of the Clerk, the Sheriff's Office and the State Attorney's Office in providing an independent watchdog system of audits, investigation and prosecution which, by definition, includes a law enforcement and prosecutorial component. The Grand Jury notes that the proposed "justice partnership" authorizing the Office of the Clerk, as a newly minted independent auditor for the county, to support the prosecutive powers of the State Attorney's Office and investigative duties of the Sheriff's Office applies only to cases of actual or potential criminal misconduct and not to mismanagement, waste, abuse and other non-criminal actions.

First, effective independent oversight involves ferreting out waste, mismanagement and abuse in addition to criminal fraud. For example, in Miami-Dade County, half of the Office of Inspector General investigations involve non-criminal matters.

Further, the Office of the Clerk acts as the Chief Financial Officer (CFO) for the county. An inherent conflict may exist when a CFO also acts an independent watchdog of the entity it serves in a supporting role.

The Grand Jury also has concerns regarding the prospect of the Office of the Clerk, one constitutional office, exerting broad authority over the policy decision-making of an independently elected governance body. The Office of the Clerk's function is to keep the county's books and to hold its funds. The risk in the Office of the Clerk's proposal is that its

forensic audit function morphs into an eighth commissioner role. This risk is heightened because – unlike an independent appointed OIG – the Office of the Clerk has non-audit duties to the BCC and also is elected.

The Grand Jury cannot ignore the clash of roles that arises when elected governmental offices or entities overlap and are structurally in tension. The Grand Jury is aware that a significant level of acrimony exists between the BCC and the Office of the Clerk regarding matters of oversight, public policy and areas of responsibility. Numerous witnesses both within and without government had strong reservations regarding any proposal giving broad independent post-auditing powers to the Office of the Clerk. The Grand Jury finds from the evidence presented that the current relationship between the Office of the Clerk and the BCC is palpably strained. The Grand Jury finds little common ground with which to build the trust necessary to achieve efficient and effective oversight of county government functions. The Office of the Clerk and the Commission do not start from scratch with each other in these matters.

OFFICE OF INSPECTOR GENERAL (O.I.G)

The Grand Jury heard testimony and received documentary evidence regarding the Miami-Dade County Office of Inspector General (OIG). The OIG model was examined because it was the direct result of Miami-Dade County's ongoing corruption battles in the 1990s. The Grand Jury sought to benefit from the approach and experience of another large South Florida County.

The Miami-Dade OIG was established by ordinance in 1998 (attached as Exhibit 20). The initial budget was approximately \$200,000 and the Inspector General shared office space, a secretary and legal counsel with the Miami-Dade Commission on Ethics. Within the first year of

operation the OIG uncovered several multi-million dollar scandals which resulted in substantial restitution to the county. The Miami-Dade Commission subsequently increased the OIG staff to 15 employees.

The Inspector General initially was chosen by the Commission on Ethics, but the process was modified. Currently, a panel consisting of the State Attorney, the Public Defender, Director of the Florida Department of Law Enforcement (FDLE), the President of the Miami-Dade County Chiefs of Police and one member of the Commission on Ethics selects and provides oversight to the Inspector General. The only aspect of the OIG that is connected to County Government is budget approval. The OIG has a staff of 38, including agents, auditing staff, attorneys, criminal analysts and clerical support. The OIG's current budget is approximately \$5.5 million.

Notably, in fiscal year 2006-2007 actual OIG expenditures were below budget and most of the OIG funding came from sources other than general county funds. These funding sources include a proprietary fee of one quarter of one percent (.25%) on all county contracts and agreements with revenue producing entities to pay for investigative work done at their departments. Miami-Dade county departments which receive revenue, such as the airport, the transit department, the water and sewer department, the solid waste department, all independently contract with the OIG to pay for investigative work done at their departments. OIG personnel are housed at those departments and handle inquiries/investigations on site (sample memorandum of understanding attached as Exhibit 21).

In fiscal year 2007-08, the OIG drew only approximately \$363,000 from general county funds (approximately seven percent of its budget). Agreements with revenue producing departments covered approximately twenty three percent or \$1.3 million while proprietary fees

and restitution generated approximately \$2.2 million dollars. In addition, the OIG had a carry over from the previous fiscal year of \$1.7 million (OIG report attached as Exhibit 22).

The Miami-Dade OIG administers a hotline and callers can remain anonymous. According to documents provided by the OIG, during fiscal year 2006-2007 a total of 586 complaints were received through the hotline (2,095 complaints have been handled during the past five years). Approximately eight percent of the complaints received resulted in the OIG initiating an inquiry, investigation or review; 10% were related to a matter already under OIG investigation or review; 43% were referred to another agency for appropriate action; 26% did not warrant any further action; 8% were from and handled by its dedicated housing hotline and 5% are still under review for further determination.

The Miami-Dade OIG has the power to demand reports, documents and information from any county official or other entity over which the county has jurisdiction. In addition, county contracts require any entity doing business with the county to cooperate with the OIG.

According to documents provided by the OIG: "During its first decade of operations, the OIG identified over \$106 million dollars in questionable costs, losses and damages and lost revenues through IOG investigations, audits and reviews. Since 1998, over \$60 million in future savings and restitution has been achieved for the county."

The Grand Jury heard testimony from a 22 year veteran corruption prosecutor from the Miami-Dade County Office of the State Attorney. The prosecutor stated:

To expect criminal investigation and prosecution to solve that entire problem is not realistic. We can pick out...corrupt officials from time to time and bring them to justice, but that doesn't deal with the management issue, the flaws in the structure of the agency, the unaccountability of the agency that might have created the climate for this corrupt activity to occur. So you really need a capacity to burrow into a corrupt agency and do more than just cherry-pick corrupt officials. You need to find out...what is the

basis for the problem. And when you have an Inspector General with those kinds of investigative resources who are trained to look at government and to criticize government and to find the flaws and propose the solutions, it's almost like having a Grand Jury that is always in session just looking at government corruption.

In assessing the viability of an OIG in Palm Beach County, the Grand Jury fully recognizes the challenges inherent in establishing an additional component of government as part of the solution to government's potential waste, fraud and abuse. The Grand Jury observed reluctance, if not outright hostility, to funding such an entity. While a broad consensus is emerging that an independent watchdog is needed in county governance, no such consensus exists yet on the means to achieve it. Of course, the funding issue may not need consensus, it simply may need leadership.

While the Grand Jury needed to hear from witnesses with divergent views and place appropriate weight on competing views and approaches, in the end, the goal was to objectively evaluate the current structure and identify specific steps needed to taken to improve it. The proposed solutions all involve some cost, however, funding need not be onerous. For example, for the amount of funds in one commissioner's single year discretionary allocation, Palm Beach County could create and fund an Office of Inspector General or other independent audit entity.

The Grand Jury also heard testimony that the collaboration of the OIG and State Attorney's Office in Miami-Dade County has saved millions of dollars by ferreting out corruption, fraud and waste. The Miami-Dade County Inspector General described the advantages this way:

The traditional corruption is the type of stuff that you love to read about in the newspaper. You know, this Commissioner gets arrested for taking a bribe, or that Sheriff's Deputy stole drugs and is selling it on the street...and the newspapers love to read about this stuff...but I submit that that is probably about ten percent of the corruption we see in government. The real corruption is non-

traditional, and it's the corruption of waste, fraud, mismanagement and abuse. And as I recall the Certified Fraud Examiners Institution, and other institutes, have basically said that essentially out of every dollar that government takes in as revenue, ten percent of it is lost because of waste, mismanagement and abuse...Most of the resources that we see employed to combat corruption go to the traditional side...Very little bit is left with the non-traditional. And as a result, we have these huge problems of waste, mismanagement and millions and millions and millions of dollars of taxpayer money was squandered. That is why an Inspector General's Office is so critically important...

3. Findings and Recommendations

The Grand Jury finds that a fundamental need exists for an entity within the Palm Beach County governmental structure with meaningful independence from the governing body to be an effective "watchdog" for the citizens of Palm Beach County. The need for effective oversight of county governance is real and change is necessary.

Using existing bureaucracies within the current county governmental structure without meaningful independence is an inadequate approach. Specifically, the Grand Jury finds that enhancing the powers of the current Palm Beach County internal auditor will not be effective. In addition, the Grand Jury finds that the current external auditor position is by its very nature unsuitable to conducting forensic investigations. The Grand Jury finds that any meaningful improvement to the current audit roles will require additional resources, structural changes and adequate forensic expertise.

The Grand Jury also finds that the proposal for the Office of the Clerk to absorb the function into her existing duties is unlikely to be accepted by the BCC and may interfere with the existing roles of the respective office and entity. The Grand Jury acknowledges that personality conflicts or tension should not dictate or preclude appropriate and needed structural changes. However, the palpable acrimony that exists between the two governmental offices was not

missed by this Grand Jury. Second, the Office of Clerk proposal provides for fraud investigations to be turned over to the Sheriff's Office or State Attorney's Office but provides no template or resources for effective investigation and follow-up of non-criminal matters. The Grand Jury finds that an effective "watchdog" entity will need the institutional knowledge, resources and mandate to investigate waste, mismanagement and abuse as well as criminal fraud. Third, such an independent entity must not audit for policy reasons. The Grand Jury finds that previous Office of the Clerk audits of the Convention and Visitor Bureau in 2006 (attached as Exhibit 23) and *The Debt Process Review* in 2009 were primarily policy audits and not for investigative or forensic audit purposes.

The Grand Jury finds that the Miami-Dade County model of the Office of Inspector General (OIG) is the most effective means of achieving a truly independent and robust "watchdog" agency in Palm Beach County governance. The Grand Jury finds that far from being a "layer of bureaucracy" costing taxpayer dollars in a shrinking economy, an independent entity (whether an Office of Inspector General, a Performance and Chief Compliance Officer or an Independent Forensic Auditor) is a necessary component of an effective, responsive government. The Grand Jury also finds that the benefit to the taxpayer would not only be found in the exposure of fraud, waste, mismanagement and abuse, but also in the value of deterrence and the enhanced reputation of this county in the business community. The Grand Jury further finds that, with careful initial planning, only a fraction of the OIG budget will need to be funded through the county's general fund.

The Grand Jury recognizes that political will is the key component to a successful Inspector General's Office. The Grand Jury believes that the BCC must assertively and openly pursue this independent oversight. Thus, the Grand Jury recommends the following:

- The Grand Jury recommends that the Board of County Commissioners draft and pass an Ordinance establishing an independent Office of Inspector General or Performance and Chief Compliance Officer with the ability to obtain any and all records from Palm Beach County governmental entities, vendors doing business with the county and entities funded in whole, or in part, by county tax dollars.
- The Grand Jury recommends that the Board of County Commissioners establish an independent oversight board consisting of the State Attorney's Office, Public Defender's Office, Sheriff's Office, President of the Police Chief's Association, the Chairman of a newly established Ethics Commission and a private resident of Palm Beach County to nominate and oversee the Inspector General/Performance & Chief Compliance Officer.
- The Grand Jury recommends the functions of the Inspector General/Performance/Chief Compliance Officer be modeled after the Miami-Dade County Ordinance establishing an Office of Inspector General.
- The Grand Jury recommends that to offset any direct taxpayer funding for this office the Board of County Commissioners require an agreement with county revenue producing departments to reimburse investigative costs and on site resources provided to those departments. In addition the Grand Jury recommends that all vendor contracts include a built-in proprietary fee of ¼ of 1% to help fund this new entity.
- The Grand Jury further recommends as previously indicated that the BCC fund an OIG or other similar independent "watchdog" entity through discretionary fund account dollars and pursue funding sources in subsequent years to reduce the use of county tax dollars.
- The Grand Jury recommends that the Palm Beach County Board of County Commissioners take immediate steps to establish and publicize a Palm Beach County Government hotline to report waste, fraud, mismanagement and abuse. This hotline must be administered by an independent entity once established.

IV. CONCLUSION

The Grand Jury acknowledges both the Palm Beach County governmental staff and the individual county commissioners for their cooperation in providing documentary evidence, and when requested, testimony regarding the five areas of governance reviewed by this Grand Jury. The Grand Jury acknowledges the numerous elected officials and other witnesses, who likewise voluntarily testified during the past four months. The Grand Jury recognizes that the areas reviewed have been, and continue to be, of great concern to the residents of Palm Beach County.

The Grand Jury concludes that Palm Beach County must consider, select and implement specific reforms to restore confidence in local governance. In this inquiry, the goal was not to develop a criminal case against any individual or entity. The objective was to identify and develop specific recommendations to achieve structural change in county government so that the community can have renewed confidence that the government works for them.