

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN
AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. 05-2013-CF-064037-AXXX-XX

Plaintiff,

vs.

MITCHELL A. NEEDELMAN,

Defendant.

**DEFENDANT MITCHELL A. NEEDELMAN'S MOTION FOR
DISQUALIFICATION OF JUDGES OF THE EIGHTEENTH JUDICIAL CIRCUIT**

COMES NOW the Defendant, Mitchell A. Needelman (hereafter "Mr. Needelman"), pursuant to section 38.02 Florida Statutes, Florida Rule of Judicial Administration 2.330, and Florida Code of Judicial Conduct Canon 3E(1), and moves for disqualification of all judges of the Eighteenth Judicial Circuit. Mr. Needelman is simultaneously moving for change of venue to Orange County, or to another county in close proximity to both Orange County and the Eighteenth Circuit.

The basis of the motion is that every judge of the Eighteenth Circuit has a close working relationship with Scott Ellis, Brevard County Clerk of Court, and his staff. Mr. Ellis is interested in this litigation and its outcome, both personally and as Clerk of Court. Combined, these facts create an appearance of impropriety that require disqualification of every judge of the Eighteenth Circuit.

As Clerk of Court, Mr. Ellis is the plaintiff in a civil suit seeking damages and rescission of the contracts that form the basis of the criminal charge. The Office of the

Brevard County Clerk of Court is the alleged victim in the criminal case. The civil suit will be impacted by the results of the criminal case.

As Clerk of Court, Mr. Ellis will have custody and control of all documents filed and all evidentiary exhibits in both this case and the civil case.

As Clerk, Mr. Ellis and his staff have a working relationship with all judges of the Eighteenth Circuit, including those in Seminole County, any of whom might be assigned to serve in Brevard County. This relationship extends well beyond this case. It involves continuous, daily contact between the judges and either Mr. Ellis, or a clerk's employee over whom Mr. Ellis holds authority. This working relationship between the judges of the Eighteenth Circuit and a person who has a direct and substantial interest in the outcome of the case creates an appearance that Mr. Ellis has the ability to influence any Eighteenth Circuit judge assigned to this case.

Finally, an event that bolsters the appearance of impropriety has already occurred. Judge John M. Griesbaum, the judge who administered the oath to Mr. Ellis following his election, was initially assigned to preside over this case by the clerk's office. Although Judge Griesbaum immediately recused himself on the basis of knowledge of the parties, see Order of Recusal dated September 24, 2013, the initial assignment was a matter within the authority of the Clerk of Court. This is just one example of actions or events which create the appearance that Mr. Ellis can, and perhaps has, used the authority of his office to influence the course of this case.

There is long-standing enmity between Mr. Ellis and Mr. Needelman, who was his opponent in the last election. Mr. Ellis was elected Brevard County Clerk after a bitterly fought and acrimonious campaign, which Mr. Ellis described in the media as personal.

During the campaign, Mr. Ellis accused both Mr. Needelman and co-defendant Rose Harr of improper and illegal conduct related to contracts executed between the office of the Clerk of Courts for Brevard County and companies owned or controlled by Ms. Harr. That same conduct is the subject of this prosecution and of the civil suit.

Both during the campaign and since his election, Mr. Ellis has made disparaging, accusatory, and condemning comments about Mr. Needelman, Ms. Harr, the contracts at issue, Mr. Needelman's family and Rose Harr's company, BlueWare, in personal interviews before the media and comments posted to print and internet news articles. Most of these comments are extremely derogatory, and many display a vitriolic hatred of Mr. Needelman. Beginning in January 2013, Mr. Ellis has posted many of these articles to the Clerk's official website, <http://brevardclerk.us/> (Exhibit A), including the derogatory comments. Mr. Ellis has thus used his authority as Clerk in a way that tends to influence public opinion, and may impact both this case and the civil suit.

These actions reveal Mr. Ellis' personal interest and active involvement in this case, as well as his use of his position as Clerk to influence the public debate and thus further his personal enmity. It is inappropriate for him to remain in a position of authority in this case.

FACTS

As Clerk, Mr. Needelman entered into contracts with two subsidiaries of BlueWare, Inc., Ms. Harr's company. One of the contracts was to make digital copies of existing records now stored by the Clerk in paper form, making required redactions to the documents accessible to the public. During the 2012 election, Mr. Ellis vigorously attacked the legality of these contracts, and attacked the honesty and integrity of both Mr.

Needelman and Ms. Harr, making this issue a lynchpin of his campaign. As part of his campaign, Mr. Ellis repeatedly, explicitly, and publicly accused Mr. Needelman, among others, of being a liar and a swindler.

The statements noted herein are a sample of those made by or attributable to Mr. Ellis, both during the campaign and after his election.^{1/} This motion will focus only on Mr. Ellis's statements. These statements provoked a firestorm of responses, mostly from persons who chose to remain anonymous, which are addressed in Mr. Needelman's motion for change of venue, filed contemporaneously herewith.

Scott Ellis media quotes

1. In a January 2, 2011, article in TCPalm, written by Florida Today reporter Rick Neale (Exhibit D), Mr. Ellis likened Mr. Needelman to "a blind, toothless hound. See <http://www.tcpalm.com/news/2011/jan/02/controversial-brevard-county-clerk-of-courts/>

^{1/} Statements quoted by reporters as having been made by Mr. Ellis are so noted. Comments counsel has found in Internet postings include comments attributable to Mr. Ellis, those attributable to others (both named and unnamed), those denigrating Mr. Needelman, and those denigrating multiple persons, including Mr. Needelman and Ms. Harr. The Internet comments selected for quotation herein are those attributable to Mr. Ellis and aimed at Mr. Needelman, either directly, by innuendo, or as part of a group of alleged wrongdoers. Although it cannot be stated with certainty that Mr. Ellis is actually the "scott ellis" who posted every one of these Internet comments, on December 12, 2012, in part of the comment string accompanying a December 11, 2012, BrevardTimes.com article by Charles Parker (Exhibit B), a poster calling himself "scott ellis" invited persons to e-mail him at sellis@spacey.net. Space Coast Conservative, a publication "Serving all Brevard County True Conservatives," contains a paid political advertisement "paid for and approved by Scott Ellis, Republican for Clerk of the Courts" in which Mr. Ellis identifies this e-mail address as his own. *available at* <http://www.spacecoastconservative.com/se/scott4.htm> (Exhibit C) last accessed October 17, 2013. Finally, many of these BrevardTimes.com articles, including comments posted by "scott ellis," are accessible from links on the Brevard County Clerk's official website (Exhibit A).

2. In five separate comments^{2/} to a February 3, 2011, article in Florida Today, Mr. Ellis wrote about Mr. Needelman: "I have never met a man so brimming with unmerited confidence. The entire office has been under a Stalinist purge similar to having a loaded gun pointed at you by an 80 IQ thug. He further stated that Mr. Needelman was "drunk on power" and "the most dangerously overconfident man" he has ever met. He goes on to accuse that Mr. Needelman will "create positions for all of his political hacks and award contracts as favors." Mr. Ellis further compares his own "lapdog" style to Mr. Needelman's "watchdog," stating "pure terror is the Management by Intimidate style of the day. You know, kind of like you treat hapless boaters in t-shirts and shorts with fishing poles. See <http://www.floridatoday.com/comments/article/20110203/NEWS01/102030310/New-clerk-of-courts-cuts-costs-staffing.html> (Exhibit E).

3. A January 4, 2012, article in the Brevard Times states that Mr. Ellis believes that Mr. Needelman has "engaged in political cronyism" ever since he took office; and questions Mr. Needelman's honesty concerning savings his programs brought to the Clerk's office ("Ellis questions the \$2 million savings figure"). Further, Mr. Ellis "**compares Needelman to Hitler**" and called Mr. Needelman "Stupid, Dishonest, and Arrogant." See <http://government.brevardtimes.com/2012/01/scott-ellis-to-run-for-clerk-of-court.html> (Exhibit F).

4. On January 16, 2012, in a Florida Today article, Mr. Ellis said "The man lied when he got into office . . . and used that lie to establish himself as a 'crisis' clerk and create a smoke screen for a slew of terminations, crony hiring and millions of dollars in no-

^{2/} The poster's name, as it appears in the comments is "scott ellis," not capitalized.

bid contracts. He has established a literal reign of terror over the employees, crashed the operations and has not saved the taxpayers anything. The whole operation is an evil lie." See <http://www.floridatoday.com/article/20120117/COLUMNISTS0207/301170005/Matt-Reed-Grudge-match-ahead-clerk-s-race.html> (Exhibit G).

5. In a February 7, 2012, Brevard Times article, Mr. Ellis called Mr. Needelman a liar, cowardly, and without decency. See <http://government.brevardtimes.com/2012/02/clerk-of-court-staffer-endorses.html> (Exhibit H).

6. In an article on February 16, 2012, the Brevard Times, reported a debate between Mr. Needelman and Mr. Ellis. The article reports Mr. Needelman calling Mr. Ellis a liar and Mr. Ellis characterizing Mr. Needelman as "evil." See <http://government.brevardtimes.com/2012/02/needelman-calls-ellis-liar-in-brevard.html> (Exhibit I).

7. On June 25, 2012, in the Brevard Times, Mr. Ellis characterized his race against Mr. Needelman as "It's personal." Mr. Ellis is described as "waging a two-front war" against Mr. Needelman and describing the office under Mr. Needelman as "chaos in the Clerk's office." Mr. Ellis is further quoted that "The whole office is for sale," referring to his accusation that payments made to BlueWare were "kickbacks." He said "The whole point is to give Blueware [sic] millions of dollars." See <http://government/brevardtimes.com/2012/06/scott-ellis.html> (Exhibit J).

8. Also appearing in the June 25, 2012, edition of the Brevard Times, was an editorial by Mr. Ellis. Mr. Needelman respectfully suggests that the title of the editorial - Ellis: taxpayers Foot Bill for Endless Self Promotion of Mr. Needelman - is sufficient to reflect the lengthy accusations contained therein. The editorial is available at

<http://government/brevardtimes.com/2012/06/ellis-taxayers-foot-bill-for-endless.html>
(Exhibit K).

9. On July 5, 2012, in the Brevard Times, Mr. Ellis stated that "My belief is the current strategy (allegedly by Mr. Needelman) of starving operations to award no-bid and sham-bid contracts to companies represented by Friends of Mitch (FOM) will be expanded." See <http://cpnews.brevardtimes.com/2012/07/clerk-of-courts-digitizing-contract.html>
(Exhibit L).

10. A December 11, 2012, Brevard Times article states:

Clerk of Courts-In-Waiting Scott Ellis sent out a missive that he titled "Clerk Loots \$6.1 Million for Blueware: Hewlett Packard Left Holding the Bag." In it, he once again calls the BlueGem digitizing contract a "scam" and claims that Hewlett Packard has loaned money to the Clerk's Office to pay-off the contract.

See <http://government/brevardtimes.com/2012/12/charles-parker-divergent-views-on.html>
(Exhibit M).

11. A January 19, 2013, Brevard Times article quotes Mr. Ellis as referring to "bogus contracts being paid," and stating "The Clerk (outgoing clerk Needleman [sic]) unlawfully borrowed \$6.1 million from Hewlett Packard and fronted Blueware \$5.7 million for their five year contract." See <http://cpnews.brevardtimes.com/2013/01/former-clerks-digitizing-contract-under.html> (Exhibit N).

12. That same January 19, 2013, Brevard Times article states "New Clerk Scott Ellis has maintained since the summer of 2012 that the digitizing contract between Needelman and BlueWare is a 'sham.'" See <http://cpnews.brevardtimes.com/2013/01/former-clerks-digitizing-contract-under.html> (Exhibit N).

13. In a January 8, 2013, Brevard Times article, Mr. Ellis was quoted as saying that Mr. Needelman "unlawfully borrowed \$6.1 million from Hewlett Packard and fronted Blueware \$5.7 million for their five year contract." See <http://government/brevardtimes.com/2013/01/scott-ellis-sworn-in-as-brevard-county.html> (Exhibit O).

14. On March 29, 2013, a Brevard Times article quotes Mr. Ellis that "We do not believe the BlueGem scanning contract was legitimately bid nor awarded. . . .," speaking about Mr. Needelman's actions as Clerk. See <http://cpnews.brevardtimes.com/2013/03/details-of-brevard-clerk-of-court.html> (Exhibit P).

15. An April 1, 2013, article in the Tampa Bay Times blog "The Buzz," states that "recently elected Clerk of Court Scott Ellis slammed the contract as corrupt and filed a lawsuit . . . to recoup millions of dollars." The article further quotes Mr. Ellis as saying "The entire bidding, selection and negotiation process regarding the (Invitation to Negotiate) was fundamentally flawed and against public policy. . ." and "It was a sham bid." The article goes on to state that Ellis "blames his predecessor (Mitchell Needelman). . ." Available at www.tampabay.com/blogs/the-buzz-florida-politics/brevard-clerk-files-lawsuit-against-company-lured-to-florida-with-economic/2112410 (Exhibit Q).

16. An August 16-2013, Brevard Times article printed the following quote by Mr. Ellis concerning the arrest of Mr. Needelman: "FDLE has done an outstanding job on the case," said Current Brevard Clerk of Court Scott Ellis who repeatedly raised these allegations during his 2012 campaign to defeat Needelman. "We are mostly just relieved to see these actions brought to justice." See <http://government.brevardtimes.com/2013/08/former-brevard-county-clerk-of-court.html> (Exhibit R).

17. A September 5, 2013, article in Florida Today quotes Mr. Ellis criticizing Mr. Needelman's actions as Clerk, saying "why do that when you control the clerk's millions in budget?" Available at www.floridatoday.com/apps/pbcs.dll/article?AID=2013309050021.

More Internet Comments by Poster "scott ellis"

1. Comments posted to a November 7, 2012, Brevard Times article, available at <http://cpnews.brevardtimes.com/2012/11/blueware-misses-clerks-office-deadline.html> (Exhibit S), include the following comments attributed to poster "scott ellis":

- a. "The whole job is a scam..." (post dated Nov. 8).
- b. "The whole Blueware deal is nothing but a multi-million scam perpetrated on the people of Brevard and Florida." (post dated Nov. 13).
- c. "A contract awarded under fraudulent conditions is not valid. FDLE has been all over this. They cannot do the indictment. Needelman should have been indicted and removed months ago. If this blog is correct it is more millions of tax dollars squandered by delaying justice for all of these flim flam artists." (post dated Nov. 14).

2. Comments posted to a December 11, 2012, Brevard Times article by Charles Parker, available at <http://cp.opinion.brevardtimes.com/2012/12/charles-parker-divergent-views-on.html> (Exhibit T), include the following comments attributed to poster "scott ellis":

- a. As part of a string of comments that make it clear Mr. Needelman, Ms. Harr, and BlueWare are the subject of discussion, poster "scott ellis" said "I would also bet a large chunk of the \$5.7 million has disappeared overseas. The funny item in the HP loan was the \$200,000 for Brunswick Corporation. Rose had wanted to buy a fancy boat, perhaps HP via the Clerk has now paid for it?" (post dated Dec. 12).

b. "It is like the thieves on Wall Street skinning us alive and saying what a wonderful thing TARP is for the whole country." (post dated Dec. 12).

3. In a comment to a Brevard Times article dated March 23, 2013, available at <http://cpnews.brevardtimes.com/2013/03/hewlett-packard-threatens-lawsuit-over.html> (Exhibit U), poster "scott ellis" said "Mitch signed off on a deal brokered by Bluegem with HP. The Clerk's Office signed an unlawful \$6.1 million promissory note and the money went to Bluegem, never touching the Clerk's Office." (post dated March 27).

At last check, the January 5, 2013, January 19, 2013, January 25, 2013, and March 23, 2013, Brevard Times articles, including the comments by poster "scott ellis," can be accessed by links appearing on the Brevard County Clerk of Court website, <http://brevardclerk.us/current-news> (Exhibit A).

Additional facts

Mr. Ellis is likely to be called as a witness in this case.

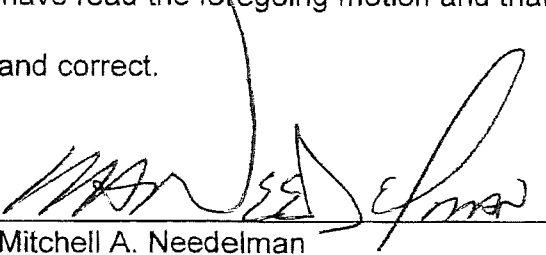
The judge initially assigned to this case was Judge John Griesbaum. The January 8, 2013, Brevard Times article "Scott Ellis Sworn In As Brevard County Clerk of Court," referred to above (Exhibit O), contains a picture of Mr. Ellis with Judge Griesbaum, who administered the oath. The picture depicts the men on friendly terms.

There is no suggestion of impropriety on the part of Judge Griesbaum. Judge Griesbaum promptly recused himself as soon as the first motion was filed in this case. Nonetheless, it tends to reinforce Mr. Needelman's well-grounded fear that his publicly-declared enemy may use, and perhaps has already used, his authority as Clerk of Court to interfere with and influence the course of this case given the fact that of all of

the judges in Brevard County who could have been chosen, the judge initially assigned to this case by the Clerk's office appears to be a friend of Mr. Ellis.

CERTIFICATION

Under penalties of perjury, I swear that I have read the foregoing motion and that the facts and assertions stated therein are true and correct.



Mitchell A. Needelman

MEMORANDUM OF LAW

Rule 2.330 and section 38.02 Florida Statutes govern disqualification of trial judges. Section 38.02 provides for disqualification if the judge before whom the cause is pending is interested in the result of the cause. Rule 2.330 provides not only for disqualification when a judge is interested in the result, but also when the party fears he will not receive a fair hearing because of specifically described prejudice or bias of the judge. Canon 3E(1) of the Code of Judicial Conduct provides "A judge shall disqualify himself or herself in a proceeding **in which the judge's impartiality might reasonably be questioned....**" [Emphasis added]. The Commentary to this Canon states that "a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply."

Although none of these authorities explicitly provides for the disqualification of all judges of a court, in exceptional circumstances, failure to grant such a motion is reversible error. Wickham v. State, 998 So.2d 593 (Fla. 2008).

Mr. Wickham was convicted of murder and sentenced to death. Many years later,

he filed a motion for post-conviction relief pursuant to Florida Rule of Criminal Procedure 3.851 which included claims of ineffective assistance of trial counsel. He moved to disqualify all judges of the Second Judicial Circuit from consideration of the motion.

The trial counsel whom Mr. Wickham alleged had been ineffective was Philip Padovano, who ran for a circuit court judgeship while the case was pending, and became a judge on the Second Circuit shortly after Mr. Wickham's trial. Judge Padovano sat on the Second Circuit for almost eight years, serving as its Chief Judge for three years, and at the time of the motion, sat on the First District Court of Appeal, which hears appeals from the Second Circuit. Also at the time of the motion, Judge Padovano's wife was a judge on the Second Circuit. "Under these extraordinary circumstances, it is reasonable for a defendant in Wickham's position to fear that a Second Circuit judge hearing Judge Padovano's testimony in determining Wickham's ineffective assistance of counsel claims would be biased in favor of Judge Padovano and against Wickham." 998 So.2d at 596.^{3/}

The circumstances of this case are equally extraordinary, and Mr. Needelman's fear of bias by the judges of the Eighteenth Circuit is even more well-grounded than was Mr. Wickham's. Not only do the judges of the Eighteenth Circuit have a close working relationship with Mr. Ellis, the Clerk, and his staff, but that relationship is both a current, ongoing relationship and a past relationship. In Wickham, only the past relationship was true of Judge Padovano and the Second Circuit at the time of Mr. Wickham's motion.

^{3/} Like the Eighteenth Circuit, the Second Circuit is a multi-county circuit, consisting of Leon, Gadsden, Jefferson, Wakulla, Liberty, and Franklin counties. § 26.0021 Fla. Stat. The Florida Supreme Court held that all the judges of the entire circuit, and not merely those from Leon County where the case arose, should be disqualified.

Moreover, there was no intimation that Judge Padovano held any personal animus against his former client, or would take any adverse action, other than offer truthful testimony at the hearing. Here, Mr. Ellis has consistently displayed active hostility toward Mr. Needelman, and a determination to prevail at any cost. He has stated that his battle against Mr. Needelman is personal, as reflected by the numerous quotes above. Mr. Ellis has further has used the contracts at issue in this criminal case and in his civil suit as a weapon against Mr. Needelman. Mr. Ellis has gone to great lengths to smear Mr. Needelman in the media, and has actively encouraged others to do so, see Defendant Mitchell Needelman's Motion for Change of Venue. Much of the derogatory press coverage is posted on the Clerk's official website, thus demonstrating Mr. Ellis' willingness to use the power of his office to further his personal goal of destroying Mr. Needelman and those associated with him.

Canon 3E(1) requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. This requirement "focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially." Livingston v. State, 441 So.2d 1983, 1986 (Fla. 1983).

Whether any judge is actually biased is not at issue. The primary consideration in determining whether a motion to disqualify a trial judge should be granted is whether the facts alleged, if true, would place a reasonably prudent person in fear of not receiving a fair and impartial trial, Arbelaez v. State, 898 So.2d 25, 41 (Fla. 2005), and the facts alleged in the motion need only show that the moving party has a well grounded fear that he will not receive a fair trial at the hands of the judge. Livingston, 441 So.2d at 1087. If the

attested facts are reasonably sufficient to create such a fear, the motion must be granted. *Id.* The facts underlying the well-grounded fear must be judged from the perspective of the moving party. Goines v. State, 708 So.2d 646, 659 (Fla. 4th DCA 1998).

In Berry v. Berry, 765 So.2d 855 (Fla. 5th DCA 2000), an attorney-client relationship arose between the trial judge and counsel for the husband after the trial but before judgment was entered. In ruling on the wife's motion for disqualification, the judge determined that his disqualification should be entered only after judgment resolving the issues previously tried had been entered, and directed the husband's attorney to prepare the judgment, based on the oral ruling on the merits the judge had made before he entered into an attorney-client relationship with the husband's attorney. The Fifth District granted prohibition. "In the instant case, we have no reason to believe that the trial judge's professional relationship with the husband's attorney resulted in unfair treatment of the wife. Nonetheless, such a relationship establishes reasonable fear in the wife that the trial judge would not treat her fairly." 765 So.2d at 858.

It is a matter of no concern what judge presides in a particular cause, but it is a matter of grave concern that justice be administered with dispatch, without fear or favor or the suspicion of such attributes. The outstanding big factor in every lawsuit is the truth of the controversy. Judges, counsel, and rules of procedure are secondary factors designed by the law as instrumentalities to work out and arrive at the truth of the controversy.

The judiciary cannot be too circumspect, neither should it be reluctant to retire from a cause under circumstances that would shake the confidence of litigants in a fair and impartial adjudication of the issues raised.

Livingston, 441 So.3d at 1085-86, quoting Dickenson v. Parks, 149 So. 459, 462 (Fla. 1932).

CONCLUSION

The comments cited above present a picture of a man entirely committed to the destruction of Mr. Needelman and others. The level of vitriol displayed by Mr. Ellis, combined with the initial assignment of Judge Griesbaum to preside over this case, creates a well-grounded fear that Mr. Ellis will use whatever means available to effectuate that destruction, including using the authority of his office to influence the outcome of this case. Additionally, as Clerk, Mr. Ellis is an interested party who has a working relationship with every judge of the Eighteenth Judicial Circuit.

It is the duty of courts to scrupulously guard the litigants' right to an impartial judge, and to refrain from exercising jurisdiction when the judge's qualification to preside is seriously brought into question, State v. Borrego, 105 So.3d 616, 617-18 (Fla. 3d DCA 2013). Mr. Ellis is both a potential witness in the case and, as Clerk, the alleged victim. Given the animus demonstrated by Mr. Ellis, and his close and continuing working relationship with every judge of the Eighteenth Circuit, scrupulous care to guard Mr. Needelman's right to an impartial judge cannot be effected by any measure less than the disqualification of every judge of this court.

WHEREFORE Defendant Mitchell Needelman respectfully requests the disqualification of every judge of the Eighteenth Judicial Circuit.

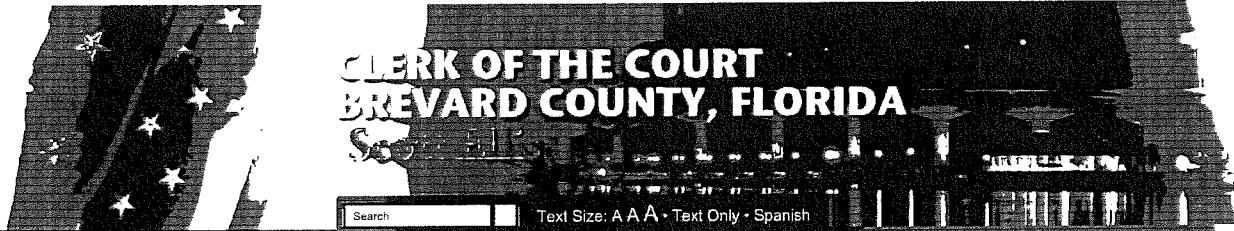
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of November, 2013, a true copy of the foregoing was filed utilizing the Florida Courts E-Filing Portal and was served via electronic mail to: Office of the State Attorney, Felony Division, 2725 Judge Fran Jamieson Way,

Bldg. D, Viera, FL 32940, at BrevFelony@sa18.state.fl.us; to Mark L. Horwitz, Esquire, Law Offices of Mark L. Horwitz, P.A., 17 East Pine Street, Orlando, Florida 32801, at mark@mlhorwitzlaw.com; and to Fritz Scheller, Esquire, Fritz Scheller, P.L., 200 East Robinson Street, Suite 1150, Orlando, Florida 32801, at fscheller@flusalaw.com.



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March 29, 2013
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- ▶ [Brevard Performs Well in Public Records Test](#)
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- ▶ [Space Coast Economic Development Commission Subpoenaed by FDLE](#)
February 28, 2013
- ▶ [Ellis and Weatherman at Odds Over BlueWare Documents](#)
February 5, 2013
- ▶ [Ellis Claims Proof of Needelman Campaign Lies in Emails and Videos](#)
January 29, 2013
- ▶ [Brevard EDC Cites "Non-Disclosure Agreement" and Confidentiality with](#)

Exhibit A

Regard to BlueWare Relationship
January 25, 2013

▶ Ellis: Emails Appear to Contradict Needelman Attorney's Testimony
January 24, 2013

▶ Former Clerk's Digitizing Contract Under More Scrutiny
January 19, 2013

▶ Ellis Plans Money Saving Changes in Clerk's Office
January 05, 2013

ARCHIVED NEWS/EVENTS

➤ PROPOSED LEGISLATION THREATENS TO DESTROY JUDICIAL CHECKS AND BALANCES -
Diane M. Matousek - Volusia County Clerk of the Court - February 2009 PROPOSED LEGISLATION
THREATENS TO DESTROY JUDICIAL CHECKS AND BALANCES.pdf (77.4 KBs)

➤ Preserving the Public's Right to Access: - letter from Clerk of Court Diane Matousek to Legislative
Delegation, February 27, 2009 Clerk_Letter.pdf (320.2 KBs)

➤ CCOC Comparative View: Article V Budgeting Realities: - CCOC_ComparativeView.pdf (89.7 KBs)

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Tuesday, December 11, 2012

Charles Parker: Divergent Views on Clerk's Contract Continue

Within a 20-minute timespan on Monday, I received two emails whose contrast could not be starker.

The subject of both is the controversial contract between the Clerk's office and BlueGem Technologies to digitize court records. The contract has been under scrutiny since its signing during the summer.

Clerk of Courts-In-Waiting Scott Ellis sent out a missive that he entitled "Clerk Loots \$6.1 Million for Blueware: Hewlett Packard Left Holding the Bag." In it, he once again calls the BlueGem digitizing contract a "scam" and claims that Hewlett Packard has loaned money to the Clerk's Office to pay-off the contract.

Shortly after, Clerk of Courts-In-Limbo Mitch Needelman issued a press release that begins, "On Friday, December 07, 2012, a milestone event took place in Brevard County that will change the way the Clerk of Courts does business from now into the future."

The English teacher in me cries out, "...two roads diverged in a yellow wood..."

The contract has raised questions many questions. I am still waiting for the answer to a few of them: Who is working, how much are they being paid, what property/equipment was bought, and what are the contract deliverables?

I have asked the Clerk's Office, BlueWare/BlueGem, Matt DuPree, the Economic Development Commission, all five county commissioners, and the Melbourne Regional Chamber of Commerce.

None have answered. However, I think I already know the answer. These basic criteria – present in most government contracts – are not written down anywhere.

The contract is basically this: Here's the money. We don't care how you get the job done or how you spend the money, you have to get the job done by 2017. Oh – and if you don't – we're covered by insurance that we paid for. So really – we don't care whether you get the job done or not.

And evidently the terms of the contract have changed from the original one signed this summer.

Incoming Clerk Ellis lays out the wide-ranging and winding road-like scenario

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this way:

Needelman contracts with BlueWare. Needelman realizes Ellis will cancel the contract and tries to sell it. HP lends money to Needelman – who in turn gives some of the money to BlueWare, buys an insurance bond, and evidently purchases bowling balls (what else does Brunswick Corporation do?).

Also, in October BlueWare chief Rose Harr is given a cushy spot on the Brevard Workforce Board of Directors and then in November is given \$760,000 by the same board for job training.

In this scenario, Ellis assumes the motive of Needelman – to keep Ellis from stopping payments to BlueWare and cancelling the contract when he takes office in January 2013.

But there is a problem with assuming the motive: there is no proof. I am sure if Needelman did not write down contract terms and deliverables, he did not write down the terms of a nefarious plot.

As well, I am sure Needleman would say his motive to change the terms of the contract – which went from \$8.5 million to \$6.1 million - was solely to save taxpayers' money.

Ellis claims, "Clerks cannot enter into promissory notes and borrow money. Legal opinions will be forthcoming when I get into office." At the same time, I would be shocked if Needelman didn't have attorneys who gave him the "okay."

And so the beat goes on. Taxpayer money is being spent on a noble project, but the taxpayers don't really know whether their money is being spent legally and efficiently. For government projects, both should be the standard.

Posted by Charles Parker at 12:43 PM

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35 comments:



scott ellis December 11, 2012 at 2:46 PM

The Clerk by law may not borrow money.

No terms in any Blueware contract have been changed.

Blueware got a \$5.7 million advance on the \$7.5 million remaining. The Clerk also picked up paying 3.55% interest on the note and the Clerk as customer paid for the Performance Bond for the vendor, Blueware (\$200,000) plus the bizarre \$200,000 payment to Brunswick.

Why would anyone borrow money to make an advance on a five year no interest contract, even if the contract were legit (and it is not)?

The money this time is stolen from Hewlett Packard.

Reply



Tyler Winik December 11, 2012 at 4:02 PM

Charles,

If non-taxing elected officials could apply for credit and obtain it from companies, wouldn't constitutional officers all over Florida and across the nation already have maxed out their credit ratings?

As the Clerk has its budget given to it by the Legislature, it doesn't have a bond rating. It cannot issue bonds, cannot tax, etc. It must spend only what the Legislature gives it, no more.

The budgets of the Clerks in Florida are heavily reviewed by the Clerk of Courts Operation Corporation ("CCOC") before being sent to the Legislature for ratification. Even then, the Legislature, not the CCOC, makes the final decision as to what county gets how much.

This is yet another illegal power grab in an attempt to provide liquid cash for Mitch & Co. pending January 8th.

Reply



scott ellis December 11, 2012 at 6:50 PM

It is also by no means a noble project. It is a useless and unnecessary project. It would be bad enough to pay triple price for something you need, but these files are so rarely touched no mass imaging serves any purpose. It serves a purpose by pushing money in a circle through a circle of friends and accomplices. Rose Harr made the statement she needed to defend her contract from Scott Ellis to another company they tried to use to scam the public (too honest, they refused) and they found their way by having the Clerk borrow the money for them.

About Me



Charles Parker

I cover politics, sports, and local news for Brevard Times. I also write opinion. You can

email me at cpbrevard@gmail.com and follow me on Twitter @cpbrevard These views are mine alone and do not necessarily reflect the views of Brevard Public Schools.

[View my complete profile](#)

Too bad for Hewlett Packard, they may already know they have been left holding the bag.

Reply

Anonymous December 12, 2012 at 2:34 AM



Charles, I can fully support Scott's contention that this is a wasteful, unnecessary make-work project that arose ONLY to facilitate the scam. I have used the Clerk's records in my work on a daily basis for decades. Since the land records from '80 forward have been on-line, I have never once needed a doct older than that (14+ yrs?). Should I ever require such an old doct, I would consider this archival research and understand that retrieving it may take more time and effort.

What we never got the numbers on:

1. How many requests does the Clerk get each year for these old documents and how much Clerk's time is spent responding to them.
2. How many total documents are there to be scanned?

Answers to these questions would have exposed this scam for what it is - hardly a 'noble' project.

Reply

Anonymous December 12, 2012 at 3:04 AM



To my previous post I can add this:

I can state with 99% certainty that no other county in FLA has spent \$\$ to digitize their ancient documents.

This from the first County Clerk record search I checked - Dade

"The Miami-Dade County Clerk's Office is making every effort to serve the public in an efficient, professional and courteous manner. Most recorded documents from 1974 to the present are available online at County Recorder's Official Record Search with older documents available from microfilm at our library located at Courthouse East."

Old records on Microfilm is good enough for Dade, but not little ol' Brevard?

Reply

Anonymous December 12, 2012 at 5:40 AM



You are all making this more complex than it really is. The first mistake is your applying logic trying to identify a need and then applying a solution, this whole project had nothing to do with improving a process. This is all about money and a quick hit.

Here is the history:

- 1 - Rose moved to Florida and needed to make money. She has no product and a big commitment to hire a lot of people in order to get the incentives blueware committed to.
- 2 - Matt meets Rose and they both need each other. Matt needs a big payday and Rose needs the money - see 1 above.
- 3 - Matt and Mitch are buddies. Matt can make a deal happen but needs to find something that somehow meets what Rose's company with no product does. Medical Records - Court Records, OK that's close enough.
- 4 - Matt writes some specifications, gives to Mitch he posts them, Rose responds with Matt authoring a response to his questions and Mitch awards the deal to Rose.
- 5 - Matt gets paid \$90,000 for bringing the deal in and then gets hired by Rose. Life is good but Mitch loses election.
- 6 - Rose needs to make sure she still gets the money. She tries to find a company to loan the county the money now so she can get paid. If she waits five years when the work is actually done it will be cancelled by someone not in the fix. IBM says no, HP says yes. HP does not know all the history.
- 7 - Rose gets the money and spends or hides it all.
- 8 - Result = County is out the money, HP is left holding the bag and Matt, Rose, and Mitch are laughing all the way to the bank.

Accomplishes to the scheme - Jennifer the make believe sales executive and Debbie the party planner.

Not that complicated.

Reply

Replies



scott ellis December 12, 2012 at 7:27 AM

I agree, Rose did not even have the rock for rock soup. However, I believe Matt & Mitch & Associates have taken in far more than \$90,000. Given how horrible the HP deal in unlawfully loaning money to the Clerk I'd give the money trail a few hound dog sniffs towards Hewlett Packard. Just as when something is too good to be true it is not, when something is too stupid to be true it also probably is not. Blueware/HP = Sarno Landfill/County Government. Both made \$6 million in one day producing nothing. Neither will ever be used.

Anonymous December 12, 2012 at 7:48 AM



The \$90,000 was the first installment. The day the county wrote a check to Rose for

\$500,000 she wrote a check to Matt for \$90,000. That was payment number one with moer to follow. Another part of the deal was she hired him as VP for BlueGem, paid him \$200,000 plus commissions for future jobs and passed jobs. He needed to get on the payroll as soon as possible to pay for his medical bills that were adding up.



scott ellis December 12, 2012 at 8:03 AM

Yes, and other payments of \$10,000 and \$30,000. On top of those were the \$5,000/\$10,000 monthly payments to Eligere, the corporate lobbying firm he ran. I would also bet a large chunk of the \$5.7 million has disappeared overseas. The funny item in the HP loan was the \$200,000 for Brunswick Corporation. Rose had wanted to buy a fancy boat, perhaps HP via the Clerk has now paid for it?



Neal December 12, 2012 at 8:46 PM

Wow, you might have something there. I got side tracked with the Bowling Ball silliness, but I recall now that Brunswick owns a boat builder. Too funny!

Reply



Anonymous December 12, 2012 at 5:58 AM

The funny part is the folks at Blueware think everyone is upset because the scanning is not done yet. So they are keeping a low profile trying to get it all completed as quickly as possible. Then in January they will pop their head out of their hole and say - Look we have 1.5 million documents scanned already.

The only problem is they are so naive they do not realize the reason people are upset is because we paid 3 times as much for a useless fixed project that never should have been awarded to any one in the first place. All the hiding and avoiding answering questions can never change that fact.

Scott you also don't know they are using proprietary methods to scan the documents that you need their software to read the document. So when you fire them, any documents they have scanned you are going to have to pay them again to convert them into a readable format for any generic program out there.

That is how they made money over the last 18 months. All their old clients have been paying them the hostage fee to get their data back.

Reply



scott ellis December 12, 2012 at 7:13 AM

There will never be 1.5 million images in the next four weeks. The photos from the press release are a Potemkin Operation. Live files which had already been scanned were shipped down for the photo-op for the press release. HP should have followed up with me when I contacted them a month ago, they would have had a better chance at recovering some of their money. I will say all damage wrought on this office since the election is due to the failure of those in power (and I am not talking FDLE) to have had the crooked rats removed back in September.

Reply



Anonymous December 12, 2012 at 7:44 AM

What photos? What press release? Is it on the web?

Reply



scott ellis December 12, 2012 at 8:14 AM

Charles has it as a .pdf. He graciously sent it to me. I am sure if you email BrevardTimes@gmail.com you can get it. It would be better if they have the time to post it, laughable, a pure Potemkin set-up. It is like the thieves on Wall Street skinning us alive and saying what a wonderful thing TARP is for the whole country.

Reply



scott ellis December 12, 2012 at 8:15 AM

Or e-mail me if you'd like, sellis@spacey.net.

Reply



Anonymous December 12, 2012 at 8:56 AM

I have read the press release and I am not really sure what they are proud of after reading the statements.

This digitization of records will enable everyone who desires to access public records to be able to do so from any computer anywhere by the year 2017 - I can monitor my whole house and access my home computer from my smart phone today. They are bragging about a capability that they will have in 2017. We paid \$8 million I want something today not in 5 years from now.

Reply

Replies



scott ellis December 12, 2012 at 10:43 AM

The Clerk's records are already online for the last decade. When was the last time you needed to see a case from 1993? Even worse, the Blueware plan is to do far more destruction than imaging. So if you really wanted to see that whole case from 1993, many pages will be gone forever.



Anonymous December 12, 2012 at 1:01 PM

And they have experience in destruction of classified records. There is nothing on their web site that indicated that. Let me guess they are subcontracting that part as well.

Reply



Anonymous December 12, 2012 at 8:59 AM

Brevard County is the FIRST in the State of Florida to get digitization underway. I am very proud of both the Clerk's employees and BlueGem for getting this project up and running so quickly -

Seriously!!! The contract was signed in April of this year and they just began scanning the documents after you have already paid them millions of dollars and you are proud of them for getting things up so quickly. What were they doing for the past 9 months???

Reply



Anonymous December 12, 2012 at 9:07 AM

After lengthy negotiations that have spanned months, the contract for digitization of Brevard County's citizens' private and public records was awarded to BlueGem Technologies -

I thought the specs were written by Matt, and then Matt responded to his own specs on behalf BlueWhere and then Mitch approved them and the contract was awarded. The whole process took three days. And from what I have read of the contract and specifications there is not a lot of details - we will give you \$8 million and have the records scanned by 2017. No milestones, no checks and balances, no requirements.

Oh yeah you had a bunch of make believe meetings in the Holiday Inn Express where Rose stood in front of the room pretending she was doing discovery for what the county needed and wanted with a whole bunch of fifth grade sticky notes. The contract was already written and signed at that point this was a dog and pony show for the employees to pretend it was some serious negotiations.

Not really sure where the law allows the winner of the contract to be the one identifying the specifications of the contracts with the employees. Shouldn't the specifications already be defined and then we ask the contractor to meet those needs. I would think the contractor would leave out the stuff they find in discovery that would be hard to do or expensive and take the low hanging fruit.

Reply



Anonymous December 12, 2012 at 10:27 AM

Can't wait for Karma to come and get Mitch and all of his associates for ripping off the taxpayers of Brevard County!!! Scott had said ALL along...Mitch is bad business. Boy was he right!!!!

Reply



Paul December 12, 2012 at 11:26 AM

Hey folks....you do know that the Clerk's Office already has 11 High-speed Canon 9050 scanners and in reality had NO NEED to Outsource the project in the 1st place. If the Clerk's Office was setup to index in a more efficient way they could internally scan 2 million images a month

Reply



Anonymous December 12, 2012 at 1:31 PM

So the Clerk's office had more equipment the day they signed the contract to scan documents than the company they signed the contract with.

Do you think a program to setup an index system cost more than \$8 million?

And you ask why everyone is so mad....

Reply



Anonymous December 12, 2012 at 2:10 PM

Anon 5:58 said: ...So when you fire them, any documents they have scanned you are going to have to pay them again to convert them into a readable format for any generic program out there.
- An additional criminal charge of Theft of Govt Property?

Anon 1:01 said: And they have experience in destruction of classified records?
-An additional criminal charge of Destruction of Govt Property?

Reply



Anonymous December 12, 2012 at 3:11 PM

Great to know we have all this scanning equip while the process of scanning the most RECENT daily records has ground to a screeching halt this month.

I'm now waiting on court case docs filed in early Nov to be viewable, that have for the past 5 yrs, been viewable within 5± days of filing. Yes, great progress.

Too bad we couldn't have gotten an INJUNCTION against screwing up all that was humming along just fine pre election!

Reply



Anonymous December 12, 2012 at 9:10 PM

But if Mitch didn't lay off all the staff that were doing the scanning already how was he going to justify a scanning project and pay Rose all the money - stop using logic!!!

Reply



Anonymous December 14, 2012 at 7:15 AM

Sad to say....us Floridians are easy pray for the Chunky Tiger....

Reply



Anonymous December 19, 2012 at 7:32 AM

I see Blueware has conned some people to joining their "sales team". Good luck selling a non-existent product. Lets see: The product is not finished, there is no user manual, there is no defined installation process or project plan, there is no installation team, the list goes on and on. Yeah, a recipe for success.

Don't you people do your research on a company before joining them? You will make no money, be told by Matt Raab that he just cannot get an update/conversion done inside 6 months for your angry soon to be former customers, and you will be subjected to Rose's stupid ramblings about following her 23 steps to a sale. A bit of advice: Be sure you send out that Cup and Packet. I am sure getting a coffee cup and some tea will guarantee you get the sale.

I guess the job market is still so tough that people will work for a corrupt company run by a psycho nut job. My guess is they do not last 3 months...and that is being generous.

Reply



Anonymous December 27, 2012 at 6:03 PM

I worked at Blueware about 8 months ago - in sales. They kept promising the product was coming but in the meantime just keep selling to the customers I was told. I could never get a release schedule or what particular modules actually made the product.

When the sales were not coming - because people do not buy vaporware - Rose blamed me for not following her patented 23 steps to a sale. These 23 steps is her excuse to use on her team when things fail. If it was so successful don't you think others would be using the 23 steps.

And yes I was eventually fired because I did not send the coffee mug to my potential customer and she blamed the no-sale because I forgot that important step.

In the end it was the greatest day in my life to get away from her and her family who are all a little warped.

Let me tell you a secret - there is no product, she has no idea what she is doing and she blames everyone else. If you are a man she will hate you the moment she meets you.

Reply



Anonymous December 27, 2012 at 6:09 PM

I just looked at their web site and under leadership team why do they have a picture of people who no longer work there. Answer - no one else is willing to have their picture put up there.

The other interesting notation is she envisions Blueware leading the future of electronic health records. Here is the sad part of that diluted statement. There is this little thing called Meaningful Use - what it means is if the federal government certifies your product in the electronic health record arena they will pay people to use it. Like a rebate for your purchase. This Blueware software that Rose envisions for leading the future is not Meaningful Use certified, never has been and never will be. I am pretty sure if someone has an option between using vaporware with a dwindling user base and not reimbursable and any other product out there, they are probably going to chose any other product out there.

Her and her daughter need to stop making global statements that are not true and make no sense. Here is a New Year's resolution for you - try telling the truth just for one day.

Reply



Anonymous December 28, 2012 at 10:52 AM

Here is an absolutely hilarious comment by Rose. What a JOKE. Here is the url for the post:

<http://www.healthinformaticsforum.com/profile/RoseHarr>

Rose Harr commented on Chris Paton's blog post "Robot and Frank": The Future of Home Healthcare Robots?

"Dear Mr. Paton and my friend David, Thank you for this ! The video is wonderful. I will use it for my company meeting if you dont mind. We are working in Robots also with Artificial Intelligence. Thanks for inspiring us. Rose Harr"

Seriously??? Rose and Blueware are developing robots with artificial intelligence? They cannot even finish a software program. To envision her company as a developer of robots and artificial intelligence shows how delusional she really is.

Reply



Anonymous December 28, 2012 at 2:44 PM

How many years can she use that picture? It was a glam shot she had taken 10 years ago. I think it is time to get a new shot. No one will take you seriously in the tech field when you look like you are modeling for JC Penney. I think Elien DeGeneres is using this same pose. Take some of the money you recently taken and get new photos.

Reply



Anonymous January 3, 2013 at 6:35 AM

It is the new year. Scott...when will the contract be cancelled and the legal proceedings begin?

Reply



Anonymous January 4, 2013 at 11:38 AM

Shoot, I'm just waiting for the office to be functional and up and running again in his first few weeks. The clerk services have all but ceased to exist at this point!

Needelman - the biggest loser/jerk/crook to ever have held an office in this County - hands down!!!

Reply



Anonymous January 9, 2013 at 10:00 AM

Scanning images and shredding, who cares? This is only part of the obligation, the easiest and cheapest part. The REDACTION process is the most critical component and most needed service for any of the scanning (regardless of who does it) to be of any value to the Clerk's office and citizens.

Reply

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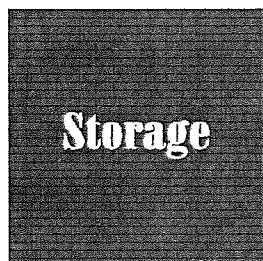
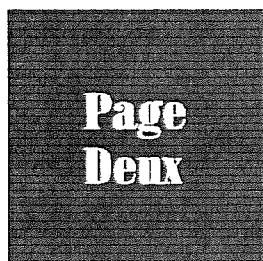
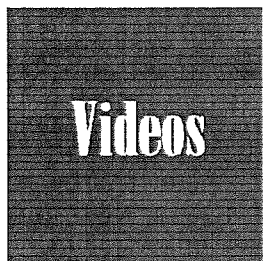


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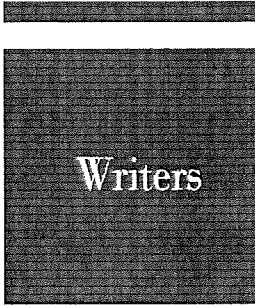
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County Commission Lack of Oversight Allows Clerk Finance Fiasco

Despite repeated warning to the County Manager and the Board on the critical changes created by the new Clerk in County Finance, nothing was ever done to demand an accounting of the Clerk was being spent. Now more than a year after the changes, the County's Comprehensive Annual Financial Report (CAFR) limped home under the wire, the external auditors are to do the same by June 30th, and the Board's own Internal Audit contractors have noted numerous yellow and red flags in the operation of County Finance.

The Board budgeted over \$600,000 in 'contracted labor' for the Clerk out of the \$2.1 million appropriation with no idea what the money was paying for. Despite seeing numerous te outsourcings in County Finance in 2011, 100% funded by the Board, never was the alleged 'savings' demanded back by the Commissioners. I have included an e-mail exchange between County Manager, which I know he had copied the Board and the new Clerk, in early 2011. I have included the link to the Internal Audit report (the link reads better than the paragraph in the County Commission meeting in April, 2011, where I again raised the issue the Board had no idea what they were paying for.

In the same meeting, Mr. Needelman offered to look at Commissioner Fisher's offer to allow him to unload County Finance to the Board. You'll have the minutes and the link to the vehement objections and the new Clerk's willingness to go along to get along.

Please note highlighting is mine.

Scott

Paid political advertisement, paid for and approved by Scott Ellis, Republican for Clerk of the Courts

-----Original Message-----

From: scott ellis[sellis@spacey.net]
 Sent: Friday, February 11, 2011 6:00 PM
 To: sellis@spacey.net; Infantini, Trudie; Tipton, Howard
 Subject: RE: Clerk's Finance and County funded County Finance

I wish you well, Howard. You are paying for four positions now gone to the tune of about \$300,000. Where do you think those funds are going, and if unspent, do you expect to get Clerk's Finance did not have four spare people. They had none. Perhaps one accountant could have been moved over, not four or five.

Good luck on checking the time cards.

I'm requesting the cost centers under FS 119. I'll also be requesting time cards as this progresses.

See if you can find another county with a Clerk's Office of more than 400 people working off the detailed equivalent of DOD time cards.

You can forward anything you choose of mine to Mr. Needelman. At least you cannot be fired for communicating with me.

Scott

----- Original Message -----

From: "Tipton, Howard"
 Date: Fri, 11 Feb 2011 17:08:09 -0500

Hi Commissioner,

While it is a different way of operating to be sure, it is a common practice in smaller Clerk's Offices. There is nothing prohibiting the combination of duties that I'm aware of as long as resources) is accounted for. They will need to make sure that they are properly accounting for time spent on the court and county side. Funds cannot be commingled. It is simply a time properly paying the amounts from the right funding sources. I asked Alphonso to check with FLCCOC which confirmed my thoughts. It is also true that in Orange things were segregated there was a separately elected Comptroller who handled the Board finances.

Wanting to be sure we're all on the same page with the changes in place, Stockton arranged a meeting this past Monday with the Clerk, his new Finance person, Alphonso, Stockton meeting and we shared appropriate Board and Administrative policies and our contact information if there were any questions. As we know, their success is our success and it was good to have with Mr. Needelman as I didn't know him prior to his election.

I will make sure the Clerk and his team are aware of the need to account for things appropriately and will suggest to him that he may wish to check with other Clerk's who have come he is following the proper reporting requirements. Certainly if there are operational issues that become apparent, our team will bring them up to the Clerk. So far I'm not aware of any questions about his plans, if it is ok with you I'll just forward those questions to the Clerk and let him respond.

Howard

Howard N. Tipton
Brevard County Manager

-----Original Message-----

From: scott ellis [mailto:sellis@spacey.net]
Sent: Thursday, February 10, 2011 5:22 PM
To: Tipton, Howard; Infantini, Trudie
Subject: Clerk's Finance and County funded County Finance

There should be no job sharing, we always kept the duties clearly delineated. I'm sure Howard will tell you they did the same in Orange County. The State through Article V pays for pay for County Finance.

When I asked to have only a 10% cut it for Finance personnel for the County side, there was no mixing of funds.

It is critical you all figure out how he thinks he can run County Finance with his changes.

Good luck, Scott

[Audit Executive Summary Report 4/18/2012](#)

Executive Summary

During fiscal year 2011, the County experienced significant turnover in key positions of the Finance Department including the CFO, Assistant Controller, Accounts Payable Supervisor and institutional knowledge. We noted issues around timeliness and review of cash account reconciliations, and remittance of unclaimed property during the Timekeeping and Payroll audit. These issues and the turnover in the Finance department were considered in our risk assessment. The primary purpose of this cycle audit is to assess the timeliness, completeness, and cash account reconciliations during fiscal year 2012. This cycle audit includes testing for compliance with the Clerk of Courts General Accounting Procedures Manual Section 6.A rec timeframe requirement. This report covers the first four months of fiscal year 2012, October 2011 through January 2012. Testing for this cycle audit of cash reconciliations took place during the second cycle audit of cash reconciliations will be issued to the Audit Committee later in 2012.

Each issue is assigned a relative risk factor. Relative risk is an evaluation of the severity of the concern and the potential impact on operations. Items rated as "High" risk are considered a significant concern and could cause significant operational issues if not addressed. Items rated as "Moderate" risk may also cause operational issues and do not require immediate attention, but soon as possible. Items rated as "Low" risk could escalate into operational issues, but can be addressed through the normal course of conducting business. The following is a high level summary of issues identified during our cycle audit of cash reconciliations. The details of these issues are included within this report.

1. Timeliness of Cash Reconciliation Preparation and Review: Clerk of Courts Finance General Accounting Procedures Manual Section 6.A states "Reconciliation is to be performed within 30 days after the close of the month." Of the 4 selected months of bank reconciliations reviewed, we noted the following:

- The October 2011 cash reconciliation was not prepared until 1/7/2012, and not reviewed until 3/22/2012.
- The November 2011 cash reconciliation was not prepared until 3/19/2012, and not reviewed until 3/22/2012.
- The December 2011 cash reconciliation was not prepared until 3/22/2012, and not reviewed until 3/22/2012.
- The January 2012 cash reconciliation was not prepared as of our audit fieldwork dates.

Cash reconciliations quickly identify errors and needed corrections. If reconciliations are performed infrequently, errors and adjustments can go undetected, resulting in the need for significant corrections when reconciliations are performed. Any reconciling differences should be corrected before the books are closed for the month end.

2. Transactions Identified but not Recorded - Through our review of the monthly cash reconciliations, we noted "unrecorded deposits," "unrecorded debits," and "transactions recorded but not posted." Although these transactions were identified by Accounting they required further documentation/investigation to book the transaction into the General Ledger. All of these amounts reported occurred and posted to the bank in the month reconciled, but were not posted in the general ledger until after the month closed. The general ledger cash balance was not adjusted during the month. In some cases, the delay in posting was up to four months.

3. Unclaimed Property: Florida Statute Section 717.113, states the following rule for unclaimed property held by governments: "All intangible property held for the owner by any county, governmental subdivision or agency, public corporation, or public authority that has not been claimed by the owner for more than one year after it became payable or distributable is subject to escheat to the state." We noted 19 outstanding checks that had not yet been remitted to the state, totaling \$3,837.53.

Holders of unclaimed property can be subject to fines and interest penalties if the unclaimed property report and remittance are not submitted by the due date.

4. Petty Cash Checking Account Use and Reconciliation: County Administrative Order 22, Petty Cash and Change Funds, includes the following guidelines for the handling of petty cash: "The Controller shall review the frequency of requests for reimbursement to see if there is a need to increase or decrease the fund. Request for reimbursement should be on a regular basis during the fiscal year. If fund is no longer used, it should be turned in." Two departments' petty cash fund checking accounts were replenished only once during 2010 and 2011, and appear

feel free to watch the entire agenda item for a full flavor of how we are being sold out. Below is the verbatim.

Commissioner Fisher begins about 1:25

Commissioner Fisher begins again about 1:41

Scott Ellis begins about 2:08

(1) Chairman Fisher advised his concern is, because he keeps hearing about the shortfall, he feels bad for Mr. Needelman's organization having all these shortfalls; and advised the Clerk to bring those functions back if that is something that Mr. Needelman could research and study for the County. Mr. Needelman stated he thinks if it is researched, there could be some kind of satisfactory.

(2) Chairman Fisher stated one of the things that he thinks is important for the public to understand is that the reason he is asking for those services to be brought back in-house, is that he has to allow the Clerk to provide those services to the Board; the Board cannot demand for the Clerk to bring it back in-house, it is a request; it has to be released back to do that; the public understands that, but the Board would have to go back and do a Charter change; and the Board is respectfully asking Mr. Needelman to consider that.

Mr. Needelman stated there is nothing wrong with sitting down and looking at what options can be done in which to save money for the taxpayers; he has absolutely no problem with as he meets his constitutional and statutory requirements; and he thinks it should be done in open dialogue, to see what services can be rendered in such a way to pass on savings.

(3) Scott Ellis stated he has listened to the comments, he has read the Agenda Item, and he is present today to warn the Board to be very careful with what it is doing with laws of uniformity and not make any irrational reactions to an irrational action. He advised he heard Chairman Fisher's comment about the Board taking over County Finance and Clerk to the Board; it check and balance under the State Constitution, and a Charter amendment would have to be done to do so; and he is surprised that a Clerk would actually agree to that, because quite clearly that those functions be separate from the Board.

Chairman Fisher stated Mr. Needelman could agree to it, though, correct. Mr. Ellis advised he would never agree to it. Chairman Fisher felt he knows Mr. Ellis, would not agree to it to give over those functions. Mr. Ellis stated the Board would have to do it by Charter amendment; it would have to go by referendum; and it cannot just simply take those functions over. Chairman Fisher knows the Board cannot take them over, but if Mr. Needelman wanted to offer it to the Board, he could. Mr. Ellis advised he cannot do so. Chairman Fisher inquired if Mr. Ellis is satisfied he responded he is absolutely positive; Attorney Knox would tell the Board the same thing; the Board will have to go to Charter amendment; and he inquired if he is correct.

Chairman Fisher inquired if the Board could take over those services, if he turned it over to the Board. Attorney Knox responded it certainly could be done by Charter amendment; and it could be done by interlocal agreement.

Mr. Ellis inquired if the State Constitution could be undone and it be done by interlocal agreement.

Attorney Knox responded the Constitution does not tell Mr. Needelman how to run his office; and if he can outsource to a private company, he may be able to do so by interlocal agreement.

Mr. Ellis stated those employees are still under his control, which is another legal issue, that they are not allowed to talk about.

Attorney Knox stated that is a different issue.

Mr. Ellis stated the fact is, the Board cannot; it is no different if the Board took over the Property Appraiser and he let the Board decide the value of properties; it can only affect the Clerk so that if \$200,000 were taken, it can only come out of County Finance and Clerk to the Board; it is half way through the fiscal year and it is equivalent to taking \$400,000 from Clerk to County Finance, that is the only place the Board can take the money; and stated he is not sure if the State money can be given to the Board for this. He stated he is going down the line talking about that do not make sense to him because it is trying to react in an environment that it should not be in, in the first place; the Board cannot take the functions; it can only take what is done; and there could be another problem if the Board starts splitting off the retirees, because if it is going to do it for the Clerk, it will need to do it for every other Constitutional Officer separated because it is not going to be able to just separate the Clerk. He stated regarding the \$200,000 Mr. Needelman owes the County, he hates to tell the Board, but he agreed - he thinks he does not owe the County one nickel; he reiterated he has argued this with the Board for years and years; every Commissioner has heard his arguments here that the bill should only bill for active duty insurance cost to those people that are active duty; it should not be including the retiree subsidy in that billing; it should not be billing for people that do not take it; if it billed properly, it would not matter how many people who came or went, it would have no impact on the County's, and it has set itself up for that. He stated he can remember one time when Commissioner Bolin asked staff why there are billings for people who do not take the insurance; Commissioner Infantini is a CPA, Commissioner Anderson has done finance; and done, it has to try and do proper cost accounting because it is not proper cost accounting to charge those retirees to the active duty people and to bill the people that do not take it; a not change it here, it cost 20-some people their jobs because it refused to change it. He stressed the Board really needed to step back and look at this situation and the proper thing to do is accounting on the insurance to charge based on how many people take that insurance. He stated he can tell the Board when he left office there was \$300,000 carry forward, there was a Reserve Fund, \$600,000 dropped out of the sky on an old legal settlement; if the Clerk takes the 18 to 20 percent cut in the fourth quarter, which is Senator Alexander's bill, that is a nothing been done since the first of the year, there was plenty of money to cover all those problems; the Board expenses do not fluctuate on a day-to-day basis; that is the most stable part of the Office, is the Board, which is the most absolutely stable part of the entire office; when the Board money comes in, it pays for a certain number of employees who are fully-funded, and not too less, the Clerk can come back to the Board in the following fiscal year; there have been times when more people were wanted in Clerk to the Board; there are times when SAP reduced the number of people in Finance; but that is the most stable function in the entire office. He stated he does not know about the audit; he does not want to get into the audit issue every right to demand to know where its money has been spent this year; when he came to the Board last year, at budget time, he told the Board, if it gives the Clerk this much money, it would pay for by position, such as Fund Accounts, Accounts Payable, Supervisors, and Clerk to the Board; the Board has the right to know where its money had been spent year-over-year projected to be spent until the end of the fiscal year; and he knows Mr. Jefferson has done something dealing with the State side, which is a morass if the Board gets into that; and he get a strong handle on where its Board money is going to today, what has been spent to date, where it is being spent, and where it is projected to be spent.

From August 2008

Wolf Endorses Sheep for Watchdog

Mr. Needelman has proudly sent forth an 'exciting' endorsement of his campaign for the Clerk of Court by former County Manager Tom Jenkins. There's a little bit there about Mr. Needelman is what I consider a RINGING endorsement of Scott Ellis!

Scott Ellis, according to Mr. Jenkins, "has had a dismal record as Clerk of Court and has been a negative, disruptive force in County Government." With a County Government that I have seen property taxes during my term my only regret is I could not have been more disruptive. During my one hitch as Clerk with Mr. Jenkins the County can point approvingly to having the Clerk out (the Clerk's Office had to carry the ball), a \$73 million parks bond issue which was SUPPOSED to pay for all of the parks became a complete fiasco, resulting in the County passing out to add another \$83 million in the forlorn effort of still trying to finish the job. During the hurricanes Mr. Jenkins proffered up a \$1 million contract deal for a friendly firm to watch the p

11/5/13

Space Coast Conservative: Scott Ellis: County Commission Lack of Oversight Allows Clerk Finance Fiasco

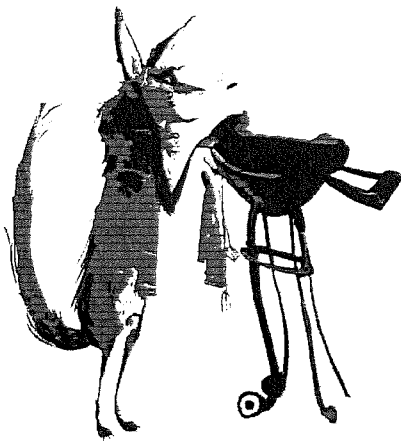
people who picked up the hurricane debris. Since Mr. Jenkins left to become Chief Jenkins with the BCSO the Clerk's Office has continued to battle against millions of lost dollars or more wastefully irresponsible spending year after year.

As for the supposed dismal record as Clerk of Court, Mr. Jenkins knows full well after my predecessor crashed the office the County had to front the Clerk's Office \$600,000 to fix (we repaid) and had a near total collapse of the Courts system. When we were able to restore the financial ledger and balance the books after the crash, Mr. Jenkins had our distributor audited by an outside accounting firm which found, disappointingly for him, the money was now correct and being distributed correctly. However, most distressing to Mr. Jenkins during our office was our dogged pursuit of the truth on the Sarno Landfill fiasco, an effort pursued almost completely by myself as Mr. Jenkins had conveniently wiped out the County funding over weeks of my being sworn into office.

The County worked for over a year to sandbag our investigation of the Sarno Landfill until finally the facts became so overwhelming even the Commissioners had to call for an investigation. County Manager, oversaw the rushed 'emergency' purchase of a parcel of land from sellers who literally bought it for \$1 million in the morning and sold it to the County for \$7 million. Confronted with the fiasco, Mr. Jenkins claimed no detailed knowledge of the deals working, yet while in Broward County one of the departments underneath him was solid waste. It is almost immediately surplus and lies idle eight years later. As for other gifts that keep on giving, Mr. Jenkins masterminded the County construction of two golf courses (one a sweetheart deal) which still to this day continue to lose over a million dollars a year for the taxpayers.

At our Florida Today interview, Mr. Needelman constantly harped that the Clerk's Office was overdoing the Audit function at the expense of other areas. The Auditors comprise about 450 full-time equivalent employees in the entire office. If FOUR out of 450 is a gross over-focus, I expect we can plan on ZERO if we have a new Watch Dog. I doubt if Mr. Needelman comes into office all 'disruptive' behavior will cease as the old County 'Go along to get along' mantra turns the watchdog function into a sheep roast.

Scott Ellis



And of course, this is a paid political advertisement, paid for and approved by (BOTH of these are approved by) Scott Ellis, Republican, Brevard County Clerk of Courts. I too am providing the following exciting endorsement.

From: Mitch Needelman [mailto:mitch@mitchforclerk.com]
Sent: Monday, July 28, 2008 11:50 AM
To: mitch@mitchforclerk.com
Subject: Exciting Endorsement from Tom Jenkins

Mitch Needelman for Brevard Clerk of Courts
2317 South Bignonia Street
Melbourne, FL 32901
321-768-7752
mitchneedelman@earthlink.net
www.MitchForClerk.com

To my friends, family, and supporters.

With less than thirty days until our election I am proud to forward you this letter from Tom Jenkins. With the support of respected members of the community like Tom, his wife Barbara, I am certain that we will bring Positive Results to the Brevard County Clerk's office.

Sincerely,

Mitch Needelman
Candidate for Brevard County Clerk of the Circuit Court

The upcoming primary election in August includes the elected office of Clerk of Court. Many of you may be receiving early voting ballots now and casting your votes early.

I wanted to make you aware that I am strongly endorsing State Rep. Mitch Needleman for the position of Clerk of Court. He is running against incumbent Scott Ellis. As County Manager I worked with Scott for many years. He has had a dismal record as Clerk of Court and has been a negative, disruptive force in County Government. Mitch Needleman will bring respect, office, and improve coordination within the Criminal Justice system.

Because this race is an open primary, Republicans, Democrats, and Independents can all vote in this primary race. Please share this information with your friends and neighbors.

Tom Jenkins

Paid political advertisement. Paid for and approved by Scott Ellis, Republican, Brevard County Clerk of Courts.

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This is a paid political disclaimer CYA. Paid for and approved by Linda McKinney 6025 Keystone Ave. Port St. John, FL 32927

For the idiots out there who will make a fuss because they're too stupid to think it through: This is a paid political advertisement. Paid for and approved by Linda McKinney, 6025 Keystone Ave. Port St. John, FL 32927. No Party Affiliation, Phantom Candidate for a Phantom (Does Not Exist: created by obamination's administration: not reality) District in Florida Near You! Now bite me. Morons.

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Remember: Anyone who does not give you a wake-up call when they see you being stupid, self-destructive, or both, just plain doesn't care about you. It's those of us who do wake you up who care.

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Controversial Brevard County Clerk of Courts steps down

~~Controversial Brevard County Clerk of Courts steps down~~

By Rick Nezele Florida Today

Sunday, January 2, 2011

VIERA — After spending 14 years as one of the Space Coast's most colorful — and controversial — political figures, Scott Ellis is returning to his roots to raise crops in Appalachia.

The Charleston, W.Va., native has resigned from his \$139,762-per-year job as Brevard County clerk of courts, two years before the end of his term. His last day was Friday.

The 52-year-old software engineer plans to become a self-coined "snowbilly" by farming in West Virginia and wintering in Eau Gallie. He hopes to secure 30 to 50 suitable acres amid the rugged, forested hills northeast of Charleston, then start growing organic fruits and vegetables by April.

"You'll miss the challenge, and you'll miss the people. But you don't miss some of the politics and things that people do (that) totally fly in the face of any rational decision," Ellis said. "You just want to pull your hair out.

~~"I don't deal well with most other politicians in Brevard County," he said.~~

The outspoken conservative has served as clerk of courts since 2001, when he replaced Randy "Sandy" Crawford. Ellis' replacement is former state Rep. Mitch Needelman, who starts work Monday.

~~Ellis defeated Needelman in a mudslinging match-up in the 2008 Republican primary during that campaign, Ellis likened his opponent to "a blind, toothless hound."~~

In the August primary, Needelman defeated two candidates to succeed Ellis, who had announced his resignation this spring. The former foes met after Labor Day weekend, and Ellis hired Needelman in early November as a \$10-per-hour part-timer to help ease the transition.

"He should be able to hit the ground running," Ellis said.

Needelman called the transition a "godsend." He visited each department and division, assembled what he believes is a strong staff of advisers and spent hours poring over and understanding the budget.