

ROBERT A. MORRIS, JR.\*  
[Robert@morrislg.com](mailto:Robert@morrislg.com)

KELLY A. CAVANAUGH†  
[Kelly@morrislg.com](mailto:Kelly@morrislg.com)

129 North Main Street  
Brooksville, Florida 34601  
[www.Morrislg.com](http://www.Morrislg.com)

Tel: (352)796-9999  
Fax: (352)796-9977



*Providing Aggressive Representation of Your Legal Rights*

**Admitted To:**  
Florida Bar  
Indiana Bar \*  
11th Cir. Ct. Of Appeals\*  
Northern District of Florida†  
Middle District of Florida  
Southern District of Florida†  
Northern District of Indiana\*  
Southern District of Indiana\*

**Member Of:**  
Florida Bar Association  
Indiana Bar Association\*  
Academy of Florida Trial Lawyers

October 2, 2019

Carolyn Timmann  
Clerk of Court Martin County  
100 SE Ocean Blvd.  
Stuart, Florida 34994

Re: Sarah Heard attorneys fees

Clerk Timmann:

You retained my office to investigate and evaluate the claim for reimbursement of attorney fees requested by Commissioner Heard based upon her acquittal in State of Florida v Sarah Heard 17 MM 3744 and 17 IN 713. In the scope of this task I have evaluated the entitlement to the claim for the attorney fees as well as the amount sought by her attorneys.

Florida courts have long recognized that public officials are entitled to legal representation at public expense to defend themselves against litigation arising from the performance of their official duties while serving a public purpose. The purpose of this common law rule is to avoid the chilling effect that a denial of representation might have on public officials in performing their duties properly and diligently. This entitlement to attorney's fees arises independent of statute, ordinance, or charter. Florida case law provides for a public official wrongly accused of violations of their duty to recover private attorneys' fees upon successfully defending the accusation. "If a public officer is charged with misconduct while performing his [or her] official duties and while serving a public purpose, the public has a primary interest in such controversy and should pay the reasonable and necessary legal fees incurred by the public officer in successfully defending against unfounded allegations of official misconduct." <sup>1</sup>.

In order to seek entitlement to reimbursement of private counsel defense fees the claimant must satisfy a two-prong test. The litigation (meaning the lawsuit the official needed to defend must 1) arise out of or, in connection with, the performance of his or her official duties; and 2) serve a public purpose.<sup>2</sup>

---

<sup>1</sup>Ellison v. Reid, 397 So. 2d 352, 354 (Fla. 1st DCA 1981)

<sup>2</sup>Thornber v. City of Fort Walton Beach, 568 So. 2d 914 (Fla. 1990)

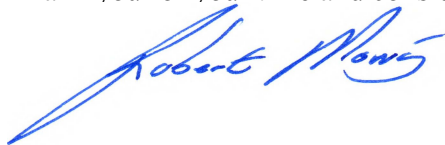
A public official is not entitled to taxpayer-funded representation simply because an allegation of misconduct arises during the course of her public duties. Rather, the context out of which the alleged misconduct arose must also serve a public purpose. Therefore the allegation of misconduct that arises in the course of his or her public duties must also have been connected to a public purpose.<sup>3</sup> It is without question to me that the allegation that the Commissioner failed to perform her required duty of maintaining public records falls within this requirement. Therefore it is my opinion that Commissioner Heard has met the requirements of the two-prong test as outlined by the Florida Supreme Court in Thornber. It can also not be questioned that she successfully prevailed in her litigation.

Once I determined that in my opinion, Commissioner Heard was entitled to receive reimbursement for her attorney fees I then looked to the reasonableness of the fees claimed. In the course of this I have met with representatives of the office of the State Attorney as well as members of the Kibbey Wagner law firm. I have reviewed the billing records as well as the documentation supporting the billing. Additionally, I have reviewed the voluminous court file and listened to the entire trial. In the course of the prosecution of this case there were three senior and learned Assistant State Attorneys who litigated this matter with great avidity. It is extremely uncommon for a misdemeanor case to have the extensive pretrial procedures that this matter did nor the protracted discovery. Additionally, the zeal which defense counsel demonstrated in the pursuit of the acquittal was more commensurate with protracted complex litigation than what would typically be seen on charges such as this. I am of the opinion that both the State and the defense expended great time and efforts on this matter.

If the matter were to be pursued to court, the issue would become the reasonableness of the fees requested. While there are issues that I have discussed with Kibby Wagner regarding their claim, it cannot be denied the time and effort expended. Pursuant to these discussions and in an effort to heal the wounds in the community, Kibby Wagner has agreed to reduce their claim for attorneys fees from four hundred thirteen thousand, four hundred eighty-nine dollars and ninety-nine cents (\$413,489.99) to the amount of three hundred thirty seven thousand, five hundred fifty seven dollars and seventy seven cents (\$337,557.77). Plus, the actual costs expended of thirty-seven thousand, four hundred forty-two dollars and twenty-three cents (\$37,442.23) for a total settlement amount of three hundred seventy-five thousand dollars (\$375,000.00). I am of the opinion that this amount is reasonable based upon my review of the case. Furthermore, I would suggest that it would also be reasonable that a Court litigating the issue of the attorney fees could return a verdict closer to the original amount than the agreed settlement.

This agreement from Kibby Wagner is not a concession to the entitlement but rather a desire to not continue to hash this matter out in the Commissioners' chambers, the press, and ultimately the courtroom. As such this stipulation is contingent upon this matter being submitted to the county for approval without further debate. I am of the opinion that should the commissioners choose not to avail the county of this opportunity to resolve this claim without further debate that the matter will result in the filing of litigation, which would be adverse to the County both legally and financially.

Thank you for your time and consideration.



---

Robert Allen Morris Jr. Esq.

---

<sup>3</sup>Maloy v. Bd. of Cty. Comm'rs, 946 So. 2d 1260 (Fla. Dist. Ct. App. 2007)