



## Agenda Item Summary

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**File ID:** 19-1023

**CNST-6**

**Meeting Date:** 10/8/2019

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**PLACEMENT:** Consent

**TITLE:**

**PAYMENT OF COMMISSIONER HEARD'S LEGAL FEES FROM CASE NUMBER 2017-MM-3744**

**EXECUTIVE SUMMARY:**

Commissioner Sarah Heard faced charges for alleged violations of Florida's public records laws in connection with the performance of her duties as a County Commissioner. Commissioner Heard was acquitted of all charges on April 12, 2019. Pursuant to Board direction, the Clerk of the Circuit Court and Comptroller has had Commissioner Heard's legal fees reviewed by an independent criminal defense attorney and is expected to receive a recommendation to pay a portion of those fees.

**DEPARTMENT:** Administration

**PREPARED BY:** **Name:** Taryn G. Kryzda  
**Title:** County Administrator

**REQUESTED BY:** Carolyn Timmann, Clerk of the Circuit Court and Comptroller

**PRESET:**

**PROCEDURES:** None

**BACKGROUND/RELATED STRATEGIC GOAL:**

On June 18, 2019 the County Administrator (Administrator) brought an item to the Board of County Commissioners (Board) to discuss payment of the legal defense expenses that were incurred by Commissioner Heard in Case No. 2017-MM-3744. The Board directed staff and the Clerk of the Circuit Court and Comptroller (Clerk of Court) to have the Clerk of Court perform an evaluation of Kibbey-Wagner's demand for payment of Commissioner Heard's legal fees. The Board asked that the Clerk of Court have the invoice and detail of expenditures as submitted by the Kibbey-Wagner firm audited to determine if what had been submitted for payment was determined to be reasonable and necessary. The Clerk of Court hired an attorney, Mr. Robert Morris a Brooksville, Fla. attorney, to audit the invoice and to provide a recommendation regarding payment.

At the time this Agenda Item was created, Mr. Morris' final report and recommendations had not been received by the Clerk of Court. To expedite payment of the legal fees incurred by Commissioner Heard, this Agenda Item was prepared. **Once Mr. Morris has submitted his recommendation, that information will be submitted as a Supplemental Memorandum to this Agenda Item.**

The County filed a claim with its personal liability insurance carrier. If the claim is approved, the

County may receive up to \$90,000 which will be applied toward the total recommended to be paid.

### **ISSUES:**

Ensure public funds are properly expended pursuant to Florida law for reasonable and necessary legal fees incurred in defense of a public official in a criminal proceeding that arose out of the performance of official duties and served the public interest.

### **LEGAL SUFFICIENCY REVIEW:**

Under Florida law, public officials are entitled to legal representation at the public's expense for litigation that arises out of the performance of the public official's duties while serving a public purpose. See *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914 (Fla. 1990). The public has a primary interest in such a controversy and should pay the reasonable and necessary legal fees incurred by the public officer in successfully defending against unfounded allegations of misconduct. *Ellison v. Reid*, 397 So. 2d 352 (Fla. 1<sup>st</sup> DCA 1981).

The Clerk of Court and Comptroller is authorized under Florida law to oversee proper expenditure of public funds in response to Kibbey-Wagner's demand for payment of Commissioner Heard's legal fees. Pursuant to Article VIII, section 1(d) of the *Florida Constitution*, "When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be *ex officio* clerk of the board of county commissioners, auditor, recorder and custodian of all county funds." In *Alachua County v. Powers*, 351 So. 2d 32 (Fla. 1<sup>st</sup> DCA 1977), the Supreme Court of Florida held that clerk of court has the authority and responsibility to perform auditing functions as an arm of board of county commission in auditing records of constitutional officers, and as watchdog of the board in pre-auditing accounts of the board in determining the legality of expenditures. In addition, "the auditing function of the clerk of court includes more than the arithmetical determination as to the amount of the claim being presented for payment, the clerk has a duty to determine the legality of the expenditure before dispensing public funds." Op. Att'y Gen. Fla. 58-236.

### **RECOMMENDED ACTION:**

#### **RECOMMENDATION**

Move that the Board approve payment of the final billing for Commissioner Heard's attorneys' trial related expenditures per the recommendation of Mr. Morris and the Clerk of Court.

Move that the Board approve a transfer from general fund reserves for the amount of the final billing.

#### **ALTERNATIVE RECOMMENDATIONS**

*Pull* this item from the Consent Agenda and direct staff accordingly.

### **FISCAL IMPACT:**

#### **RECOMMENDATION**

A transfer from general fund reserves is necessary to cover this expenditure.

Funding Source	County Funds	Non-County Funds

<b>Subtotal</b>		
<b>Project Total</b>		

**ALTERNATIVE RECOMMENDATIONS**

None

**DOCUMENT(S) REQUIRING ACTION:**

- ☐ Budget Transfer / Amendment
 ☐ Chair Letter
 ☐ Contract / Agreement
- ☐ Grant / Application
 ☐ Notice
 ☐ Ordinance
 ☐ Resolution
- ☐ Other:

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