

Meeting Date
November 17, 2015



AGENDA	
Section	Consent
Item No.	<i>II. C.1</i>

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Permission to Advertise Request for Qualifications (RFQ) for Special Magistrate services for Contractor Licensing and Vested Rights cases; Appoint Selection and Negotiation Committees; and Authorize Chair to execute the resulting contract.
DEPT/OFFICE:	Central Services Department

Requested Action:

It is requested that the Board of County Commissioners approve the advertisement of a RFQ for Special Magistrate services to hold hearings for unlicensed contractor and vested right cases and establish Selection and Negotiating Committees. It is further requested that the Board approve the Chair to execute resulting contract upon review by the County Attorney's Office and Risk Management.

Summary Explanation & Background:

On February 3, 2015, the Board of County Commissioners authorized a one-year agreement with Stanley Wolfman to provide Special Magistrate services at a rate of \$125.00 per hour. The Special Magistrate holds hearings and assesses fines against persons found to have violated various county codes. Staff requests:

1. Authorization to issue an RFQ for Special Magistrate services for Contractor Licensing and Vested Right cases.
2. Establishment of a Selection and Negotiating Committee, who will review, score, rank, negotiate and select Attorney to provide services. The Selection Committee and Negotiating Committees are recommended as follows: Assistant County Manager, Central Services Director, and Human Resources Director, or their designees.
3. Approve the Chairman to execute resulting contract upon review by the County Attorney's Office and Risk Management.

Fiscal Impact: The cost of the contracted Special Magistrate is funded through the assessment of administrative costs for those cases involving code compliance and through vested rights application fees. Annual cost for services is estimated at \$6,000.

Contact: Teresa Camarata, Central Services Director, 5-2543, Teresa.Camarata@brevardcounty.us
 Leslie Rothering, Purchasing Services, 5-6038, Leslie.Rothering@brevardcounty.us

Clerk to the Board instruction:

Exhibits Attached:

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager, Frank Abbate	Department Director / Extension Teresa Camarata, Central Services Director, ext. 52543
Stockton Whitten	Assistant County Manager, Venetta Valdengo	<i>Teresa Camarata</i>



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

November 18, 2015

MEMORANDUM

TO: Teresa Camarata, Central Services Director Attn: Leslie Rothering

RE: Item II.C.1., Permission to Advertise Request for Qualifications (RFQ) for Special Magistrate Services for Contractor Licensing and Vested Rights Cases; Appoint Selection and Negotiation Committees; and Authorize the Chairman to Execute the Resulting Contract

The Board of County Commissioners, in regular session on November 17, 2015, granted permission to advertise Request for Qualifications (RFQ) for Special Magistrate Services to hold hearings for unlicensed contractor and vested rights cases; approved establishing Selection and Negotiation Committees to review, score, rank, negotiate, and select Attorney to provide services, consisting of Assistant County Manager, Central Services Director, and Human Resources Director, or their designees; and authorized the Chairman to execute resulting contract, upon review by the County Attorney's Office and Risk Management.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

cc: Committee Members
Finance
Budget

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: Joseph Miniclier, P.A.	
2. Fund/Account #:	Division Name:
4. Contract Description: Special Magistrate Services	
5. Contract Monitor: Leslie Rothering	6. Mail Stop #: 83
7. Dept./Office Director:	8. Contract Type: Service
ACTION DATE:	ACTION REQUIREMENT:

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	✓	_____	<u> </u>	<u>2/24/16</u>
Risk Management	X	_____	<u>JLJ</u>	<u>2/24/2016</u>
County Attorney	<u> </u>	_____	<u> </u>	<u>2/25/16</u>

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

AO-29: EXHIBIT I

LAW OFFICES OF
STROMIRE, BISTLINE & MINICLIER

AN ASSOCIATION OF PROFESSIONAL ASSOCIATIONS

1037 PATHFINDER WAY
SUITE #150
ROCKLEDGE, FLORIDA 32955

HAROLD T. BISTLINE, P.A.
JOSEPH E. MINICLIER, P.A.
LEON STROMIRE
1931-2001

E-MAIL: sbmmglaw@aol.com
FAX: (321) 636-1170
PHONE: (321) 639-0505

February 22, 2016

BREVARD COUNTY PURCHASING SERVICE

2725 Judge Fran Jamieson Way
Viera, FL 32940
Attention: **LESLIE ROTHERING**

Re: Special Magistrate Service RFQ 3-16-04 Agreement

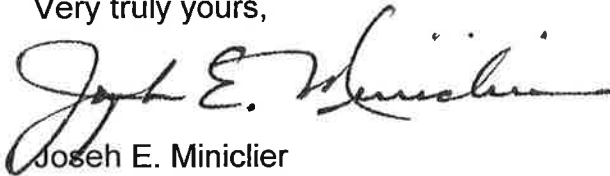
Purchasing Services:

I have received the proposed Agreement and find it acceptable.

Enclosed please find the Agreement which has been executed by me in three (3) originals.

Please contact me if you have any questions.

Very truly yours,



Joseph E. Miniclier
JEM/anr

Enclosures: Special Magistrate Agreement (3)

SPECIAL MAGISTRATE AGREEMENT

THIS AGREEMENT made and entered into this 25th day of February 2016, by and between Joseph E. Miniclier, P.A., hereinafter referred to as "Special Magistrate," (whose business address is 1037 Pathfinder Way, Suite 150, Rockledge, FL 32955) and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "COUNTY".

WITNESSETH

WHEREAS, as authorized by Florida Statute 162.03, the County has adopted Chapter 2, Article VI, Division 2 Code Enforcement Special Magistrate Code as part of the Brevard County Code of Ordinances;

WHEREAS, the County wishes to designate one or more qualified individuals to serve the function as a special magistrate to hold hearings and assess fines against persons found to have violated various county codes;

WHEREAS, use of a special magistrate provides for an equitable, expeditious, effective and less expensive procedure for enforcing codes and ordinances;

WHEREAS, the County issued a Request for Qualifications (RFQ) seeking qualified applicants to hold hearings regarding violations of contractor licensing and nuisance abatement codes, various other county codes and vested rights;

WHEREAS, the person designated herein as Special Magistrate meets the qualifications as set forth in the RFQ and has been recommended by the selection committee to the Board of County Commissioners for final selection;

WHEREAS, the parties hereto agree to the following terms as set forth herein.

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. **TERM.** The Special Magistrate hereby agrees to perform the services of a Special Magistrate to the Brevard County Board of County Commissioners for a period of one (1) year. This Agreement shall commence on February 25, 2016 and will terminate one year later, February 25, 2017 unless extended by agreement of both parties.

2. RENEWAL. This Agreement may be renewed annually at the discretion of the County for one year terms, for no more than 4 additional years, on the same terms and conditions contained herein unless otherwise modified by agreement of the parties at the time of renewal.

3. SPECIAL MAGISTRATE SERVICES. The Special Magistrate will perform the following services

(a) Preside over hearings regarding violations of county codes including, but not limited to, codes relating to property maintenance, natural resources, environmental health, fire safety, solid waste, contractor licensing, adult entertainment and nuisance abatement; vested rights determinations.

(b) Perform such services as provided for under the terms of this Agreement pursuant to Chapter 2, Article VI, Division 2, of the Brevard County Code of Ordinances, and pursuant to any procedures as may be furnished to the Special Magistrate which are in compliance with the Special Magistrate's obligation to provide due process to the parties before the Magistrate.

(c) The Special Magistrate shall issue written orders for each case. The orders shall be on the forms provided by the County. Final orders shall include findings of fact and conclusions of law. Unless the Special Magistrate requests the Petitioner and Respondent submit proposed orders or a party(ies) request the opportunity to submit proposed orders, such written orders shall be filled out by the Special Magistrate contemporaneously with the Magistrate's announcement of the findings at the conclusion of the review of the case or hearing on the case.

(d) Convene for hearings at least once per month (provided there are cases to be heard) on a regular schedule.

(e) The County may add other types of code violations or other dispute resolution processes that are to be scheduling for a hearing and heard by the Special Magistrate.

4. SPECIAL MAGISTRATE QUALIFICATIONS. The Special Magistrate holds a Juris Doctorate degree, is a member of The Florida Bar, and has practiced law for five (5) years in the State of Florida. The Special Magistrate will notify the County of any pending investigation or discipline by the Florida Bar.

5. COMPENSATION. In consideration of the Special Magistrate performing the above referenced duties, the County shall pay the Special Magistrate at a rate of \$125.00 per hour for hearing time. The Special Magistrate shall receive a minimum of \$125.00 should the Special Magistrate have proceeded to travel to the hearing location and is informed the hearing is canceled or if the scheduled hearings/proceedings last less than an hour. The Special Magistrate shall submit such invoices, in the format agreed upon by the parties. The County shall pay the Special Magistrate under the provisions of the Florida Prompt Payment Act. The Special Magistrate shall not be compensated or otherwise paid for travel time unless approved in advance. The Special Magistrate may submit reimbursement for any necessary postage, paper, copies, etc... However, it is anticipated this would be minimal given that most documents will be exchanged electronically/digitally.

6. OBLIGATIONS OF THE COUNTY. The County shall be required to provide the following:

- (a) A tape or digital recorder, at the County's expense, together with sufficient blank tapes, etc., to record all hearings.
- (b) Administrative personnel to serve as a clerk to the Special Magistrate and to support hearings. Such administrative personnel will provide public notice of each hearing, coordinate preparation of the hearing agenda with staff (including assembling the back-up materials for each agenda item), establish (in consultation with the Special Magistrate, if needed) a schedule for finalization of each agenda, read agenda items into the record, swear-in witnesses as necessary, receive affidavits, prepare documentation (evidence log) for items submitted into evidence, record all hearings, prepare written minutes of the hearing, record the final orders issued by the Special Magistrate in the public records of Brevard County and maintain the official records of the special magistrate hearings, and to perform other administrative tasks associated with the Special Magistrate.
- (c) An attorney or member of the administrative staff who shall represent the County by presenting cases before the Special Magistrate.

7. INSURANCE. The Special Magistrate, as an appointed official acting on behalf and within the jurisdiction of the County, is included as a covered party under the County's Public Officials Liability insurance program. Said insurance coverage currently is written with limits of \$3,000,000 per claims with a \$3,000,000 aggregate.

8. PROCEDURES WORKSHOP. The Special Magistrate shall be required to attend workshop to review procedures to be held at a future date and time agreeable to the parties at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida 32940. This Workshop shall be held as soon as practical after both parties have executed this Agreement. Should this Agreement be renewed, the County reserves the option to require attendance at such a Workshop upon renewal, but in any event, no more than once per year. Compensation for attendance shall be as provided for on an hourly basis as provided for in Paragraph 5 above.

9. HEARING DATES. Hearings before the Special Magistrate for violations of the Brevard County Codes shall be scheduled to begin under this Agreement in February 2016, and each month thereafter. The County shall work with the Special Magistrate to set a regular schedule for the hearings for the year with the intent to schedule the hearings for the same time of the month (for example, the third Thursday of each month) and to begin the same time of the day to the extent possible. Additional hearing days may be convened if the case volume requires more frequent hearings

Hearing days shall generally be held at the Brevard County Government Center located at 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida.

10. SCHEDULING CONFLICTS/CONFLICTS OF INTEREST.

(a). If the Special Magistrate has knowledge of any scheduling conflicts for any scheduled hearing, the Special Magistrate shall contact the Clerk to the Special Magistrate within the County's Central Services Department at (321) 633-2082 so that such conflicts may be resolved.

(b) Should the Special Magistrate become aware of any conflict of interest resulting from past representation a party or witness, the Special Magistrate shall contact the Clerk to the Special Magistrate as provided for above.

(c) The Special Magistrate agrees that during the term of this Agreement, and any renewal or extension, the Special Magistrate will not represent any party in a matter that could come before a Special Magistrate as a result of a violation of Brevard County Code of Ordinances.

11. NON-ASSIGNMENT. The Special Magistrate shall not enter into any agreements with third parties to delegate any or all of the responsibilities, duties, or rights herein set forth.

12. INDEPENDENT CONTRACTOR STATUS. The Special Magistrate shall perform the conditions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. The Special Magistrate shall be responsible for any and all federal, state and local required deductions and/or taxes on the compensation paid under this contract.

13. CONFLICTS OF INTEREST. Should the Special Magistrate determine that he/she has a conflict of interest or for any reason feels it would be inappropriate for him/her to hear and deliberate on any given individual's alleged violation or petition, he/she will immediately inform the Clerk to the Special Magistrate within the County's Central Services Department of such conflict so that arrangements to retain another Special Magistrate for that alleged violation or petition hearing can be made.

14. PUBLIC RECORDS. Both parties understand that the County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes and all other applicable Florida Statutes. If the materials provided by the Special Magistrate do not fall under a specific exemption, under Florida or federal law, materials provided by the Special Magistrate to the County would have to be provided to anyone making a public records request. It will be the Special Magistrate's duty to identify the information which it

deems is exempt under Florida/federal law and identify the statute by number which exempts that information.

Should any person or entity make a public request of the County which requires or would require the County to allow inspection or provide copies of records which the Special Magistrate maintains are exempt from Public Records Law or are confidential, it shall be the Special Magistrate's obligation to provide the County within 24 hours (not including weekends and legal holidays), of notification by the County to the Special Magistrate of the request, of the specific exemption or confidentiality provisions so the County will be able to comply with the requirements of Fla. Stat. 119.07(2)(a). Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Special Magistrate to the County which the Special Magistrate maintains are exempt or confidential from such inspection/production as a public record, then the Special Magistrate shall hire and compensate attorney(s) who shall represent the interest of the County as well as the Special Magistrate in defending such action. The Special Magistrate shall also pay any costs to defend such action and shall pay any costs and attorney's fees which may be awarded pursuant to Fla. Stat. 119.12.

15. TERMINATION. Either party hereto may terminate this Agreement upon thirty (30) days written notice. Notwithstanding the previous sentence, the Special Magistrate shall serve at the pleasure of the County Commission and may be removed from service at any time, with or without cause, by a majority vote of a quorum of the County Commission.

16. NOTICE. Notice under this Agreement shall be given as follows:

To the Special Magistrate by delivering written notice to

Joseph E. Miniclier, P.A.
1037 Pathfinder Way, Suite 150
Rockledge, Florida 32955

To the COUNTY by delivering written notice to

Central Services Department Director
2725 Judge Fran Jamieson Way
Building C, Suite C303
Viera, Florida 32940.

17. ATTORNEY'S FEES/NON JURY TRIAL: In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs. Any trial to enforce or interpret the terms of this agreement shall be non-jury.

18. GOVERNING LAW: This Agreement shall be governed, interpreted and construed according to the ordinances of Brevard County and of the State of Florida. Any action brought to enforce the terms or litigate the terms of this agreement shall be brought in the venue of Brevard County, Florida. Any Federal action may only be initiated in the Middle District Court, Orlando Division.

19. VENUE: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida.

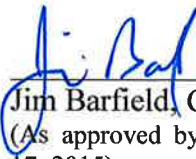
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

ATTEST:




Scott Ellis
Clerk of the Circuit Court

**BOARD OF COUNTY
COMMISSIONERS OF BREVARD
COUNTY, FLORIDA**

BY: 

Jim Barfield, Chairman
(As approved by the Board on November
17, 2015)

Reviewed for legal form and content:



(Assistant) County Attorney

SPECIAL MAGISTRATE



Joseph E. Miniclier, P.A.