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March 27, 2019

M E M O R A N D U M

TO: Eden Bentley, County Attorney

RE: Item L.2., Direction for Dispute Resolution Proceedings with the Former Children's Services Council (CSC)

The Board of County Commissioners, in regular session on March 26, 2019, determined significant legal harm could and likely would occur should the County participate in dispute resolution with what remains of the CSC as the County could be obligated to pay both its own legal fees, as well as those of what remains of the CSC given that what remains of the CSC has paid Lewis, Longman & Walker, P.A. (LEWIS LONGMAN) with County funds; and accordingly, the County Attorney's Office is directed to decline to participate in dispute resolution.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

cc: Each Commissioner
County Manager



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MEMORANDUM

TO: Eden Bentley, County Attorney

RE: Item L.2., Direction for Dispute Resolution Proceedings with the Former Children's Services Council (CSC)

The Board of County Commissioners (BOCC), in regular session on March 26, 2019, determined finding that on January 22, 2019, the CSC was dissolved as a direct and immediate result of the BOCC having unanimously through a 5:0 vote passed Ordinance No. 19-02; the same day that the BOCC unanimously passed Ordinance No. 19-02, but approximately 10 minutes prior to the Ordinance having been filed with Secretary of State, one or more former members of the CSC transferred \$22,726.40 of assets, that formerly belonged to the CSC, from Bank of America to the Space Coast Health Foundation (SCHF) to be held at a restricted account at the Community Bank of the South; pursuant to Section 189.076, Florida Statute, the County assumed the CSC's debts, liabilities, contracts, obligations, and property including monetary property at the time the CSC was unanimously dissolved; prior to the BOCC having unanimously dissolved the CSC, Marilyn "Bunny" Finney (FINNEY) served as Vice Chair of the CSC; on February 1, 2019, FINNEY signed a retainer agreement with the law firm of LEWIS LONGMAN; on that same date, \$10,000 was transferred from the unanimously dissolved CSC's account at the SCHF to LEWIS LONGMAN; prior to the unanimous dissolution of the CSC by the BOCC, the CSC had not yet entered into contract with LEWIS LONGMAN and it had not yet paid any retainer to LEWIS LONGMAN; the retainer agreement and the transfer of County funds are not merely voidable, but rather void; any unauthorized expenditure of County funds by LEWIS LONGMAN may constitute conversion and/or civil theft; directed the County Attorney's Office to include Commissioner Lober as a signatory so as to fulfill any obligation he may have, as an attorney, to report misconduct; authorized the County Attorney's Office to refer any potential criminal conduct to the Brevard County Sheriff's Office and/or the Florida Department of Law Enforcement for investigation, as deemed appropriate in the sole discretion of the County Attorney; until such time as suit is filed by what remains of the CSC, the County Attorney's Office shall begin drafting a complaint against LEWIS LONGMAN, FINNEY, and any and all additional individuals who directly and importantly, or through joint and several liability, could reasonably and lawfully be named as defendants for counts including, but not necessarily limited to conversion and/or civil theft; should suit be filed by what remains of the CSC, the County Attorney's Office may use whatever is drafted as the basis of one or more counterclaims; and upon receipt of service of process indicating that suit has been filed by what remains of the CSC, the County Attorney's Office is directed to conduct discovery and implead any and all individuals who directly, or through joint and several liability, could reasonably be named as parties to any lawsuit filed by what remains of the CSC.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
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County Manager

REQUESTED ACTION: Provide direction to the County Attorney's Office regarding dispute resolution proceedings with the former Children's Services Council.

I. Avoid dispute resolution by making a finding of significant legal harm due to the financial impacts of the use of the funds previously held by Children's Services Council. This action seeks to avoid the potential for imposition of attorney fees for declining to participate in dispute resolution. There are a variety of choices under this category. (Super majority vote is required for each choice under this category.)

a) Find significant legal harm could occur if dispute resolution procedures are initiated and decline to participate in the dispute resolution procedures.

b) Find significant legal harm could occur if dispute resolution procedures are initiated and decline to participate in the dispute resolution procedures. Also, direct the County Attorney's Office to actively pursue and file any actions deemed necessary to recover the \$22,726.40; this action is likely to raise the issue of the status of the former entity.

II. Participate in dispute resolution. Various levels of participation are possible.

a) Direct the County Attorney to participate in the initial dispute resolution meeting and report back to the Board.

b) Direct the County Attorney to participate in the dispute resolution process and anticipate a joint meeting between the Commissioners and the former Council members.

III. Direct the County Attorney to take no action.

IV. Any direction the Board chooses to give.

SUMMARY EXPLANATION and BACKGROUND:

The Board of County Commissioners dissolved the Children's Services Council January 22, 2019. On that date, the Children's Services Council held \$22,726.40 in Bank of America. Upon dissolution all of the assets of the former Children's Service Council should have transferred to the County. On January 22, 2019 those funds were transferred to The Space Coast Health Foundation Inc. to be held in an account on behalf of the Children's Services Council. On February 1, 2019, a sum of \$10,000 was transferred to the law firm of Lewis, Longman and Walker and a retainer agreement was signed with the law firm. All of the funds previously held by the Children's Services Council (\$22,726.40) are now in dispute and may be called the disputed funds.

The former Children's Services Council wishes to challenge the dissolution and, through an attorney, has instituted the dispute resolution procedures outlined in chapter 164, Florida Statutes. The first step is a meeting with the attorney representing the former Children's Services Council. Fees may be assessed against the Board for failure to participate in dispute resolution procedures unless significant legal harm could result from participation. In an effort

to address all the concerns, staff proceeded with a request for the former Council's attorney to attend the initial meeting dispute resolution and waive any and all potential claims for attorney's fees against the County. He declined to do so and stated he is being paid. The source of payment appears to be funds that should have been transferred to the County when the Children's Services Council was dissolved based on the information currently available to the county staff. At the meeting of the former Children's Services Council held on March 20 2019, the discussion confirmed the attorney for the former council is to be paid with the disputed funds. Accordingly, proceeding to the dispute resolution process will cause the disputed funds to be spent on attorney's fees for the attorney representing the former Children's Services Council. Thus, the proceedings will cause significant legal harm by diverting county funds to the attorney. In addition, because the dispute resolution procedure may not be successful, there could be a doubling of costs due to the use of the dispute resolution process on top of standard litigation and the costs resulting from that activity. Accordingly, staff suggests the Board consider making a finding there is significant legal harm presented by proceeding to the dispute resolution process. This finding may assist the County in avoiding attorney's fees if there are subsequent claims that dispute resolution procedures should have been followed. A supermajority vote is required to make a finding significant legal harm could occur.

Commissioner Lober moves that the Board of County Commissioners (hereinafter "BOCC") find that:

(1) on January 22, 2019, the Children's Services Council (hereinafter "CSC") was dissolved as a direct and immediate result of the BOCC having unanimously (5-0) passed Ordinance 19-02; and

(2) the same day that the BOCC unanimously (5-0) passed Ordinance 19-02 but approximately ten minutes prior to the ordinance having been filed with the Secretary of State, one or more former members of the CSC transferred \$22,726.40 of assets, that formerly belonged to the CSC, from Bank of America to the Space Coast Health Foundation (hereinafter "SCHF") to be held at a restricted account at the Community Bank of the South; and

(3) pursuant to § 189.076, Fla. Stat., the County assumed the CSC's debts, liabilities, contracts, obligations and property (including monetary property) at the time the CSC was unanimously (5-0) dissolved; and

(4) prior to the BOCC having unanimously (5-0) dissolved the CSC, Marilyn "Bunny" Finney (hereinafter "Finney") served as "Vice Chair" of the CSC; and

(5) on February 1, 2019, Finney signed a retainer agreement with the law firm of Lewis, Longman & Walker, P.A. of West Palm Beach (hereinafter "Lewis Longman"); and

(6) on that same date, \$10,000.00 was transferred from the unanimously dissolved (5-0) CSC's account at the SCHF to Lewis Longman; and

(7) prior to the unanimous dissolution (5-0) of the CSC by the BOCC, the CSC had not yet entered into contract with Lewis Longman and it had not yet paid any retainer to Lewis Longman; and

(8) the retainer agreement and the transfer of County funds are not merely voidable, but rather void; and

(9) any unauthorized expenditure of County funds by Lewis Longman may constitute conversion and/or civil theft;

(10) **significant legal harm** could and likely would occur should the County participate in dispute resolution with what remains of the CSC as the County could be obligated to pay both its own legal fees as well as those of what remains of the CSC given that what remains of the CSC has paid Lewis Longman with County funds.

Accordingly, the County Attorney's Office is directed to decline to participate in dispute resolution.

The County Attorney's Office is ~~further~~ directed to timely research whether there exists any obligation to report the conduct of Attorney Andrew Baumann (of Lewis Longman) to the Florida Bar and, if it is deemed that there is any such requirement, the County Attorney's Office is directed to advise the Florida Bar accordingly. In any such communication, the County Attorney's Office is directed to include Commissioner Lober as a signatory so as to fulfill any obligation he may have, as an attorney, to report such conduct.

The County Attorney's Office is authorized to refer any potential criminal conduct to the Brevard County Sheriff's Office and/or the Florida Department of Law Enforcement as deemed appropriate by the County Attorney.

Until such time as suit is filed by what remains of the CSC, the County Attorney's Office shall begin drafting a Complaint against Lewis Longman, Finney and any and all additional individuals who directly, or through joint & several liability, could reasonably and lawfully be named as defendants for counts including, but not necessarily limited to conversion and/or civil theft. Should suit be filed by what remains of the CSC, the County Attorney's Office may use whatever is drafted as the basis of one or more counterclaims.

Upon receipt of service of process indicating that suit has been filed by what remains of the CSC, the County Attorney's Office is directed to conduct discovery and implead any and all individuals who directly, or through joint & several liability, could reasonably be named as parties to any lawsuit filed by what remains of the CSC.

unauthorized expenditure of County funds by LEWIS LONGMAN may constitute conversion and/or civil theft; (10) significant legal could and likely would occur should the County participate in dispute resolution with what remains of the CSC as the County could be obligated to pay both its own legal fees, as well as those of what remains of the CSC given that what remains of the CSC has paid LEWIS LONGMAN with County funds; accordingly, the County Attorney's Office is directed to decline to participate in dispute resolution; the County Attorney's Office is directed to timely research whether there exists any obligation to report the conduct of attorney Andrew Baumann of LEWIS LONGMAN to the Florida Bar and, if it is deemed that there is any such requirement the County Attorney's Office is directed to advise the Florida Bar accordingly

in any such communication, the County Attorney's Office is directed to include Commissioner Lober as a signatory so as to fulfill any obligation he may have, as an attorney, to report misconduct;

the County Attorney's Office shall be authorized to refer any potential criminal conduct to the Brevard County Sheriff's Office and/or the Florida Department of Law Enforcement for investigation, as deemed appropriate in the sole discretion of the County Attorney

until such time as suit is filed by what remains of the CSC, the County Attorney's Office shall begin drafting a complaint against LEWIS LONGMAN, FINNEY, and any and all additional individuals who directly and importantly, or through joint and several liability, could reasonably and lawfully be named as defendants for counts including, but not limited to conversion and/or civil theft; should suit be filed by what remains of the CSC, the County Attorney's Office may use whatever is drafted as the basis of one or more counterclaims;

upon receipt of process indicating that suit has been filed by what remains of the CSC, the County Attorney's Office is directed to conduct discovery and implead any and all individuals who directly, or through joint and several liability, could reasonably be named as parties to any lawsuit filed by what remain of the CSC.

Pritchett asked if everything is okay.

Bentley responded from a legal standpoint she thinks he is asking to prepare to defend, he is not asking us to file and that part is fine; the only urgency here today is the time frame for dispute resolution; the only thing she really has to come away with is some kind of direction as to whether or not to proceed with dispute resolution; and the other issues can be addressed at a later time, if the Board chose to do so.

Pritchett asked if those goes as a motion today does it include everything that needs doing and then some.

Bentley replied it does include some things that have not been pursued at this time as of yesterday the council was talked to for the former CSC, who indicated at that time that he had not disbursed money from his trust fund at this time.

Pritchett asked if it needs to be done in two motions.

Bentley responded the Board could do it that way or it could defer the portion that is not dispute resolution to another date, if the Board chose to do so; the CSC council has walked around filing at this point; and she can live with it as it is, if that is what Commissioner Pritchett is asking.

Pritchett asked Commissioner Lober for this thoughts on that.

Lober responded he prefers to go with it as it is; he advised he has not obligated the County Attorney's Office to drop everything and start drafting; he wants to give them authorization to start drafting things because he thinks as they go through the process, it may be more convenient to start now than it will be to start later; so if they want to get their thoughts together and starting putting things down in a complaint, all the better; if the County ends up getting sued, they can use that as the basis for a counterclaim; and if the County does not end up getting sued and the Board wants to pursue the \$22,726.40, it will be well-situated to do that; he is not trying to force the County Attorney's hand by any means; and he wants her to be well-situated and authorized to do what needs to be done to get the County postured regardless of how this thing goes.

Chair Isnardi advised for the County Attorney to reach out if there is any concern of direction because the Board can modify and give different direction if need be, because she can imagine it will be evolving probably.

Bentley stated if the Board wants to have flexibility to change the direction, it may be easier to only act on the significant legal harm issue at this point; and then she can come back for direction on the rest of it, would be a way to spilt it up.

Pritchett okay

Lober how about this; in looking at this lets just strike the last three paragraphs altogether, so it will end with the paragraph that pertains to any Florida Bar misconduct and the obligation report; the reason that he likes that is because there may be an obligation for him to report as an attorney, if he is aware of something that may be misconduct; he thinks that also applies to the attorney and certainly the County Attorney's Office, so for every ones benefit, he prefers to have that included as well; just strike the last three; and he will move to pass it that way.

Motion by Lober,

Pritchett inquired if just item 10 could be done first and then have another motion on items one through nine with that other paragraph.

Lober stated affirmatively.

Lober moved to find that significant legal harm; he withdrew his former motion; with a new motion move to have the BOCC find that significant legal harm could and likely would occur should the County participate in dispute resolution with what remains of the CSC as the County could be obligated to pay both, its own legal fees, as well as what remains of the CSC; given that what remains of the CSC has paid Lewis, Longwood and Walker, P.A. of West Palm Beach with County funds; and accordingly, the County Attorney's Office is directed to decline to participate in the dispute resolution.

Lober so that will be the first

Pritchett I second that

Isnardi passes unanimously 4:0.

Lober as a second motion, he is trying to think if he should leave it for redundancy sake, just to leave the remainder of it within and pass it as written, it is not going to hurt anything to have it in there if the item is left is it

Bentley it would be a little redundant, it might get pulled into a... depending on how the cases fallout. She prefers them separate.

Lober take out 10 and the one sentence in the paragraph immediately following that says accordingly, the County Attorney's Office is directed, and ends in dispute resolution. He is fixing the grammar, by taking out and on nine and replacing semicolon with a period. He moves to approve the remainder of this so everything through nine, skipping 10 and the one sentence paragraph after 10, and then picking up immediately after that with the County Attorney's Office is further directed; although strike the word further because that would be the first direction in this motion; The County Attorney's Office is directed to timely research and then everything else remains unchanged; and the only thing taking out of this is 10, the paragraph following 10, and then those couple grammatical items in striking through further.

Pritchett second

Isnardi passes 4:0.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Bentley provided the Board with a handout of her March 26, 2019, Report regarding the former Children's Services Council (CSC); at the end she will ask for direction regarding the dispute resolution proceedings with the former CSC; the Board resolved the CSC in January, in late February a notice was received from the attorney for the former CSC, which requested dispute resolution procedures; that procedure requires the Board to respond within 30 days; there was an extension made to that; and she asked the Board for authorization a couple of weeks ago to proceed to the initial meeting provided the Board would not incur any costs and attorney's fees, et cetera for attending that meeting. She went on to explain the reason that condition was put on the request for authorization was there is concern of about approximately \$22,000; \$22,000 was held by the CSC prior to dissolution and where it had gone could not be determined at the point when it appeared before the Board previously; at this point it has been confirmed that \$22,000 has been transferred to the Space Coast Health Foundation, Inc., to be held on behalf of the former CSC; and \$10,000 of that money was transferred to the Law Firm of Lewis, Longman & Walker, as a retainer. She stated she contacted the attorney for the former CSC and asked if he would attend the first meeting on a pro bono basis or if he would guarantee that there would be no fees incurred; he responded that he was being paid; it is believed that the source of his payment is the \$22,000, which is called the disputed funds; someone was sent to attend the former CSC meeting last week, they talked about that \$10,000 being spent by their council; it is believed that if the Board decided to proceed to dispute resolution at this time, the Board may be experiencing the expenditure of the disputed funds; and it is not recommended proceeding to dispute resolution at this point. She added under the dispute resolution statute, the Board may be subject to attorney fees if not attending, unless a finding of significant legal harm is found; given the expenditure of the funds, she recommended for the Board to consider making a finding of significant legal harm because of the attorney fees situation in this case; the Board could make that finding, that requires a supermajority vote which mean all four Commissioners present since Commissioner Tobia has left; the Board could decide not to participate at all and direct staff to take no action at all, or it could come up with another approach; but her recommendation would be find significant legal harm and to decline to participate.

Commissioner Lober advised he is going to make a rather lengthy motion; a copy has been sent to the Clerk and Bentley, and the Board should have a copy.

The Board of County Commissioners (BOCC) find that (1) on January 22, 2019, the Children's Services Council (CSC) was dissolved as a direct and immediate result of the BOCC having unanimously through a 5:0 vote passed Ordinance No. 19-02; (2) the same day that the BOCC unanimously passed Ordinance No. 19-02, but approximately 10 minutes prior to the Ordinance having been filed with Secretary of State, one or more former members of the CSC transferred \$22,726.40 of assets, that formerly belonged to the CSC, from Bank of America to the Space Coast Health Foundation (SCHF) to be held at a restricted account at the Community Bank of the South; (3) pursuant to Section 189.076, Florida Statute, the County assumed the CSC's debt, liabilities, contracts, obligations, and property, including monetary property at the time the CSC was unanimously dissolved; (4) prior to the BOCC having unanimously dissolved the CSC, Marilyn "Bunny" Finney (FINNEY) served as Vice Chair of the CSC; (5) on February 1, 2019, FINNEY signed a retainer agreement with the law firm of Lewis, Longman & Walker, P.A. of West Palm Beach (LEWIS LONGMAN); (6) on that same date, \$10,000 was transferred from the unanimously dissolved CSC's account at the SCHF to LEWIS LONGMAN; (7) prior to the unanimous dissolution of the CSC by the BOCC, the CSC had not yet entered into contract with LEWIS LONGMAN and it had not yet paid any retainer to LEWIS LONGMAN; (8) the retainer agreement and the transfer of County funds are not merely voidable, but rather void; (9) any