



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Unfinished Business

---

I.2.

7/20/2021

---

### **Subject:**

County Attorney Recruitment

### **Fiscal Impact:**

None

### **Dept/Office:**

Human Resources

### **Requested Action:**

It is requested that the Board of County Commissioners provide direction to the Human Resources Director with regard to which applicants for the County Attorney position they wish to invite to participate in a public interview before the full Board.

### **Summary Explanation and Background:**

In accordance with direction previously provided by the Board, during the month of April Human Resources advertised for the upcoming County Attorney vacancy. By the close of the advertisement period, the County received 16 applications and resumes. Following Board direction, these applications were reviewed by Human Resources, the County Manager and the County Attorney. Separately, each arrived at the same list for our top 6 candidates. The Board then decided to select the same top 6 candidates for background screenings at the Board meeting on May 18, 2021.

Those candidates are:

Abigail Jorandby  
Bruce Barnard  
Cecil Richardson (Morris)  
John Cary  
Mark Moriarty  
Robert Eschenfelder

As directed by the Board, individual interviews with Commissioners or their representative were conducted with the short-listed candidates at the Government Center in Viera on the morning of July 15, 2021. Bruce Barnard, one of the 6 short-listed candidates, asked to be removed from consideration for this position and did not participate in these interviews.

At this time the Board is requested to decide if some or all of the short-listed candidates should be invited to participate in a public interview before the full Board in advance of a decision to select a candidate and direct

who should conduct the contract negotiations with the successful candidate on behalf of the Board.

**Clerk to the Board Instructions:**



July 21, 2021

**M E M O R A N D U M**

**TO:** Jerry Visco, Human Resources Director

**RE:** Item I.2., County Attorney Recruitment

The Board of County Commissioners, in regular session on July 20, 2021, appointed Abigail Jorandby as the County Attorney effective November 1, 2021; directed staff to begin negotiating a contract; and authorized the County Manager, or his designee, to perform any necessary changes or actions in furtherance thereof.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS**  
**RACHEL M. SADOFF, CLERK**

A handwritten signature in cursive script, reading "Kimberly Powell", is written over the typed name and title.

Kimberly Powell, Clerk to the Board

cc: County Manager

## Donna Scott

---

**From:** Commissioner, D2 <D2.Commissioner@brevardfl.gov>  
**Sent:** Sunday, July 18, 2021 5:23 PM  
**To:** Commissioner, D1; Commissioner Rita Pritchett; Commissioner, D2; D2\_Users; Commissioner, D3; Commissioner John Tobia; Commissioner, D4; Commissioner Curt Smith; Commissioner, D5; Zonka, Kristine; D2\_Users  
**Cc:** Kimberly Powell; Duisberg, Cheryl; Donna Scott; Deborah Thomas; Samantha McDaniel; Nicole Summers; Bentley, Eden; Abbate, Frank B; Denninghoff, John P; Liesenfelt, Jim; Jorandby, Abigail F.; rob@cityattorneys.legal; mrichardson@westmelbourne.org  
**Subject:** Memo re CAO Applicants  
**Attachments:** Memo re CAO Applicants.pdf  
**Importance:** High

Dear Clerk to the Board:

The attached memo is being provided to other commissioners prior to the 7/20 BoCC meeting. As such, I would ask that you please include it in the meeting minutes for that date's BoCC meeting. Should you have any question(s), please feel free to reach out. Thanks in advance for your assistance.

Truly,

/s/ Bryan

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."



Bryan A. Lober, Commissioner, District 2  
2575 N. Courtenay Pkwy, Suite 200  
Merritt Island, FL 32953

Telephone: (321) 454-6601  
Fax: (321) 454-6602  
www.brevardfl.gov  
D2.commissioner@brevardfl.gov

July 18, 2021

**Memo Discussing Issue Coming before BoCC on Tuesday, July 20, 2021**

This memorandum does not solicit feedback from any Commissioner and Commissioners are specifically asked not to respond to it (or discuss it amongst one another outside of a duly noticed BoCC meeting) as doing so could and likely would constitute a violation of one or more provisions of Chapters 119 and/or 286, Fla. Stat. So that it may be made available to the public, a copy of this memo is being provided to the Clerk to the Board so that it may be included in the minutes for the Tuesday, July 20, 2020 BoCC meeting. Please see the previously provided County Attorney's Office Inter-Office Memo dated December 12, 2016 which indicates that communications of this variety are authorized under applicable law.

As you are likely aware, Attorney Bruce Barnard requested that his name be withdrawn from consideration amongst the staff short-listed applicants previously presented to the BoCC. As such, please be advised that this is a memo pertaining to the five short-listed applicants interviewed by four of the five duly elected Brevard County Commissioners on Thursday, July 15, 2021. I am distributing this memo in advance of the Tuesday, July 20, 2021, BoCC meeting in which this topic will be addressed under Item. I.2. of the agenda in the hopes that this memo will assist in making discussion more efficient.

At risk of stating the obvious, each of the applicants brings with them strengths and weaknesses relative to the other short-listed applicants. The bulk of questions I posed to applicants were intended to identify and bring into focus these differences with particular emphasis on concepts and topics likely to repeatedly come before the BoCC and/or the CAO.

Multiple questions consisted of fact patterns being presented to applicants. Applicants were expected to identify issues within those fact patterns and were asked to provide best-practice advice in remedying those issues identified. Topics discussed were varied and dealt with matters including, but not limited to, CRAs, BCFR, cross-training of CAO staff, etc.

My questions focused largely on the following concepts:

(1) Ability to adapt personal risk tolerance to a dynamic commission in which membership is likely to change on a recurring basis every other year. This is critical as an individual attorney's risk tolerance may not reflect the risk tolerance of a majority of

**District 2 Includes**

Cocoa • Kennedy Space Center • Merritt Island • Port Canaveral • Cape Canaveral • Avon by the Sea • Cocoa Beach • Snug Harbor • Patrick AFB • Rockledge

the commission. If an attorney is incapable of adapting his or her work product and advice to the desired parameters of an often-fluid commission, he or she should be excluded from consideration.

(2) Ability to respect present culture of deference to individual commissioners on matters disproportionately or exclusively impacting an individual commission district. An attorney who is philosophically opposed to our culture of substantial deference may find it difficult to fit in and adapt to an uncomfortable environment.

(3) Level of understanding of and respect for the relationship between the County Attorney's Office and the County Manager's Office. Applicants who are unclear or who vacillate as to where the County Attorney's authority ends and the County Manager's role begins may quickly find themselves at odds with the County Manager and/or CMO staff.

(4) Unequivocal understanding that the County Attorney serves at the pleasure of the Commission and knowledge of the criticality of working with the varied personalities who, together, compose the BoCC at any given time.

(5) Appreciation that the County Attorney works for the BoCC, as an entity, and not for any individual commissioner. While it is entirely reasonable for an individual commissioner to request a memorandum of law regarding a topic within the sphere of county governance for the purposes of clarifying lawful options and requirements, the County Attorney must not allow himself or herself to become weaponized as the instrument of any particular commissioner. So, too, must the County Attorney not utilize Brevard County resources in the personal endeavors of individual commissioners.

(6) Level of understanding of and respect for the BoCC setting policy and staff having the primary obligation of implementing policy direction promulgated by the BoCC. Assuming such BoCC direction is not prohibited by applicable law or rule, staff must be willing to implement policy with which they may personally disagree. Applicants who meaningfully struggle with this delineation in roles must be excluded from consideration.

(7) Willingness to litigate in situations in which reasonable dispute resolution efforts have failed. All applicants were asked when they, personally, last attended and handled a deposition, hearing, trial, or similar matter. Sitting 'second-chair' (e.g., backup) in such matters was given less weight than having primary responsibility.

(8) Willingness to handle matters in-house in which a cost-benefit analysis supports handling the matter in-house. The default for matters not covered by our insurer should be for matters which are reasonably able to be litigated in-house to be litigated in-house. We have a number of attorneys employed directly by Brevard County and there is no excuse for us to regularly farm out certain recurring varieties of litigation. Conversely, where suitable knowledge and experience, in-house, is absent or clearly lacking, there must be a willingness to know one's limits. For instance, applicants should be comfortable handling, in-house, most code enforcement cases, Bert Harris

claims, HR & employment law issues, Sunshine & public record matters, dangerous dog hearings, etc. Atypical matters such as those requiring bond counsel, specialized environmental law knowledge (e.g., with respect to solid waste), admiralty law, etc. may need to be sent to outside counsel.

(9) Knowledge and experience with risk management as a function of the practice of law. This includes the ability to identify existing deficits in policy and improve the office by implementing necessary and/or beneficial changes to ensure that our practices are regularly evaluated.

(10) Likely impact on morale of the office. We do not employ any bad or incapable attorneys. Any applicant who would come in and clean house will be doing us a grave disservice and will harm morale in the office for some time to come. Applicants were asked if they would allow those presently employed in the office a period of not less than several months to prove themselves during which termination would occur only as a result of a major and extenuating circumstance in which continued employment would amount to a grave liability. Additionally, questions were posed regarding who would accompany the applicant if he or she is chosen as County Attorney. Preference was given toward those who indicated they would bring 0, 1, or 2 attorneys and/or assistants with them. With a capable office, there is no need for a vast entourage and extreme staffing changes stand only to harm office morale.

(11) With respect to those who applied from outside the organization, I attempted to ascertain whether they would hold any grudge against our internal applicant. This is an important consideration as she is a capable attorney and an asset to the organization. If she is not chosen, the selected candidate would do well to keep her in a Chief Deputy County Attorney, Chief Assistant County Attorney, or similar role.

(12) Ability and likelihood of implementing private practice skills in a government office. There is a reason that governments are stereotyped as being inefficient and bureaucratic. We should consider the extent to which an applicant brings with them skills from private industry and can articulate, with specificity, how he or she is likely to implement those skills if selected as County Attorney.

(13) Subject matter expertise in a relevant area of law. If an applicant brings with him or her particular knowledge or skill in a likely recurring topic, Brevard County stands to benefit from that expertise.

(14) Disinclination to micromanage or unnecessarily interfere. If a commissioner is comfortable working directly with an ACA tasked to a particular department and that ACA is also amenable to direct communication, the County Attorney should not need to serve as the gatekeeper through whom the commissioner must communicate with the ACA. While there should be an internal policy requiring ACAs to inform the County Attorney that such communication has taken place, if all is functioning well, the County Attorney should not hijack and micromanage productive communications.

Somewhat surprisingly, amongst all the applicants interviewed, there was greater commonality in responses than there were differences. I did not leave the interviews thinking that one applicant was a superstar and that all others were inadequate in comparison. Multiple applicants were strong and we have an excellent problem in having to choose between several solid options.

As such, to me, a critical question, which will assist in determining who should be selected, is whether we wish to have an internal applicant, an external applicant, or whether we should split the difference with an applicant who has been at the CAO for a number of years (10) but has also been outside of it for some time (6 years) as well. There may not be a right or wrong answer as this is entirely subjective.

Admittedly, there are some things which are done perfectly in the CAO right now. However, as every candidate correctly surmised in responding to certain hypothetical fact patterns which were, in actuality, based upon and very closely mirror actual ongoing issues, there is substantial room for improvement with respect to certain policies and procedures. Immediate recognition of glaring inadequacies coupled with an intelligent response on potential remedial action earned some candidates far more credit than others who either failed to spot all of the relevant issues or who could not quickly offer a reasonable course of action to remediate the problems. Given that this document is a public record, I will refrain from highlighting the particular areas of inadequacy save to say that some are objectively unlawful and, in fact, at least one is unconstitutional.

In the interest of brevity, I will focus my discussion on the three strongest candidates:

**Internal candidate: Abigail Jorandby.** Abby has approximately 2 years of service at the Brevard County Attorney's Office and has been an attorney for approximately 20 years. Abby has been board certified in city, county, and local government law since 2020.

**Strengths:** Abby is the safest choice from a morale standpoint. She appears comfortable working with her colleagues and has no axe to grind. She has existing working relationships with others in the organization and there will be little to no drama if she is chosen. Abby is clearly intelligent, conscientious, and competent in the areas in which she has been assigned (e.g., Parks & Recreation) during her tenure at the CAO. Abby is what I would term the safest choice. Her interpersonal skills are as good or better than any other applicant.

**Weaknesses:** Abby appears to lack the same level of confidence as the other two who made it into my top-three list. This may be a product of her present position at the CAO as she is unquestionably aware of ongoing issues but does not presently possess the authority to fix them.

**External candidate: Robert Eschenfelder.** Rob has been an attorney for over 25 years and has worked in private practice and in the public sector. Rob has been board certified in city, county, and local government law since 2016.



Strengths: Rob stands to bring forth substantial private sector experience which appears unmatched by my other top-three ranked candidates. With respect to hypotheticals posed, he was able to issue spot as well or better than any other applicant. Off the cuff, Rob was able to offer intelligent commentary on potential courses of action to rectify ongoing concerns. Rob brings with him particular subject matter expertise in Sunshine and public records law. I have read his publications in researching these issues before Brevard County ever advertised the County Attorney position. Rob's familiarity with these topics is likely far superior to any other applicant.

Weaknesses: While any external applicant carries this risk, it is unclear how Rob will work with the existing CAO staff. Depending on the extent to which changes are eventually made, morale may temporarily decline if staffing changes occur.

**External candidate: Cecil Morris Richardson.** Morris has been an attorney for 20 years and presently serves as the City Attorney for West Melbourne. While Morris is not board certified, I am fully confident he could become board certified should he so desire. I do not and I would not hold his lack of board certification against him.

Strengths: Morris is incredibly well rounded. Morris worked at the Brevard County Attorney's Office for 10 years and has rotated through working with essentially all of Brevard County's various departments. As City Attorney for West Melbourne, Morris clearly has the ability to work as the 'top-dog' at the organizational level. His knowledge with respect to zoning appears as good or better than any other applicant. I have known Morris for years longer than any of the other applicants and I can attest to his high level of professionalism.

Weaknesses: As West Melbourne has an extremely small legal department, it is unclear how Morris will function as a supervisor over the various ACAs and support staff. This unknown introduces an element of risk.

Unlike all other applicants, Morris was reluctant to opine as to one of my reality-based fact patterns.

Of my top-three list, Morris would likely have the greatest difficulty in adapting to work with a changing BoCC. Morris has the type of personality that folks will likely either love or hate. This creates a risk of potentially intense personality conflicts with individual commissioners depending upon a given commissioner's personality and level of involvement with the CAO.

We would likely be well served by any of the three above-listed applicants. I look forward to discussing the applicants and their qualifications this Tuesday.

Please note that while I do not intend to make such a motion, I would likely support a motion to cull our short list and have two or three applicants come back to perform

public interviews. I will be ready to do this or to vote for a particular applicant, on Tuesday, depending upon the will of my colleagues on further consideration.

**RE: Draft of potential motion for tomorrow's meeting**

Jorandby, Abigail F. <Abigail.Jorandby@brevardfl.gov>

Mon 7/19/2021 4:55 PM

To: Commissioner, D2 <D2.Commissioner@brevardfl.gov>

Good Afternoon Commissioner,

This revision addresses the concern we discussed.

Thank you again for your support.

Abby

Abigail Forrester Jorandby, Esq.  
Deputy County Attorney  
Brevard County Attorney's Office  
2725 Judge Fran Jamieson Way, Suite 308  
Viera, FL 32940  
Telephone: 321. 633. 2090  
Fax: 321. 633. 2096  
[abigail.jorandby@brevardfl.gov](mailto:abigail.jorandby@brevardfl.gov)



City, County and Local Government

Please note: The State of Florida has a broad public records law. Most written communications to or from county employees regarding county business are public records available upon request to the public and media. Your e-mail communications may therefore be subject to public disclosure.

**From:** Commissioner, D2

**Sent:** Monday, July 19, 2021 4:23 PM

**To:** Jorandby, Abigail F. <Abigail.Jorandby@brevardfl.gov>

**Subject:** Draft of potential motion for tomorrow's meeting

Abby,

Pursuant to our recent discussion, please see below and let me know if you have any concerns or equivocations so that I may have an opportunity to rephrase my motion accordingly.

Alternatively, if this meets with your approval, please reply "okay" or similarly in the affirmative.

Kind regards,

Bryan

I move that, effective the start of pay period 17, which begins on Sunday, July 25, 2021, Deputy County Attorney Abby Jorandby be named as Interim County Attorney with the intention that, assuming the transition goes well, she will be confirmed as County Attorney at the Brevard County Board of County Commissioners meeting scheduled to take place on Tuesday, October 26, 2021 at 9:00 AM. During the time Ms. Jorandby will serve as Interim County Attorney, she will receive the salary advertised for the County Attorney position, not a reduced portion thereof.

Concurrent with Ms. Jorandby assuming the role of Interim County Attorney, Eden Bentley's job title and role will switch to County Attorney Emeritus. Ms. Bentley will continue to serve as County Attorney Emeritus until Monday, November 1, 2021, at which time it is anticipated she will retire. Throughout her term as County Attorney Emeritus, Ms. Bentley's salary shall remain unchanged from its present level.

As both Interim County Attorney Jorandby and County Attorney Emeritus Bentley will be receiving the full County Attorney salary, from Tuesday, October 26, 2021, until Monday, November 1, 2021, they shall be jointly and severally responsible for all obligations and duties traditionally belonging to the County Attorney.

It is hoped that Interim County Attorney Jorandby and County Attorney Emeritus Bentley will agree on a date, prior to Tuesday, October 26, 2021, upon which these duties and responsibilities will shift fully to Interim County Attorney Jorandby. At such time, Ms. Bentley will thereafter serve at the pleasure of and in an advisory capacity to Ms. Jorandby with all County Attorney duties and obligations falling to Ms. Jorandby. Until such time as this transition takes place, in the event of any conflict between the two, County Attorney Emeritus Bentley shall maintain the controlling decision.

Staff is hereby directed to implement all changes necessary to effectuate the direction specified and/or contemplated by this motion including adding an agenda item confirming Ms. Jorandby as County Attorney onto the consent agenda for the Tuesday, October 26, 2021 BoCC meeting where it is only to be pulled, from consent, upon the request of one or more commissioners.

Name: \_\_\_\_\_

Cary

**Please Circle Two Names:**

- John Cary
- Robert Eschenfelder
- Abigail Jorandby
- Mark Moriarty
- Morris Richardson

Name: \_\_\_\_\_

*Rto*

**Please Circle Two Names:**

- John Cary
- Robert Eschenfelder

☒ • Abigail Jorandby

• Mark Moriarty

☒ • Morris Richardson

Name: Tobias

**Please Circle Two Names:**

- John Cary
- Robert Eschenfelder
- Abigail Jorandby
- Mark Moriarty
- Morris Richardson

Name: ZONKA

**Please Circle Two Names:**

- John Cary
- Robert Eschenfelder
- Abigail Jorandby
- \* • Mark Moriarty
- \* • Morris Richardson



Name: LOBER

**Please Circle Two Names:**

- John Cary
- Robert Eschenfelder
- Abigail Jorandby
- Mark Moriarty
- Morris Richardson