

The Honorable Andrew D. Owens, Jr.
Chief Judge
Manatee County Judicial Center
2002 Ringling Blvd., 9th floor
Sarasota Florida

IN RE: Emergency letter to strike a candidate's name from recall ballot for violations of the Resign to Run Law, Florida Statute 99.012 (3)(c) and (3)(g)

Dear Judge Owens:

1. The undersigned is a registered voter in the City of Bradenton Beach, Florida.
2. This Court ordered a special recall election regarding Bradenton Beach Mayor William Shearon for May 19, 2015 with the qualification period from April 14 to April 17, 2015. (Exhibit A)
3. This recall effort started January 14, 2015 and sets as its grounds as two email messages from Mayor William Shearon which are alleged to be violations of the Sunshine Law. (Exhibit B) Neither of said emails have been submitted to, or investigated by, or heard before, the Florida Commission On Ethics. Mayor Shearon in his defense statement in the recall petition contests these grounds.
4. City of Bradenton Beach Commissioner Jack Clarke (Vice-Mayor) and Mayor William Shearon both were "qualified" as candidates for the recall election by Michael Bennett, Supervisor of Elections for Manatee County during the qualification period.
5. Commissioner Clarke signed a letter of resignation from the Bradenton Beach Commission, dated April 9, 2015, which was filed by the Bradenton Beach City Clerk on April 10, 2015 (Exhibit C) with an effective date about May 19, 2015 thereby violating Florida Statute 99.012 (3)(c). Said statute requires that such a resignation be submitted at least 10 days prior to the date of qualifying; i.e., prior to April 4, 2015.
6. Commissioner Clarke has not filed any resignation with an effective date prior to the end of qualifying; i.e., April 17, 2015, so as to comply with F.S. 99.012(3)(g).
7. Commissioner Clarke has been thoroughly aware and knowledgeable of all steps of the recall process throughout its inception in January 2015 to date, including appearing as the only speaker at a public informational meeting sponsored by the Committee to Recall William Shearon on April 16, 2015 in Bradenton Beach.
8. The Islander, a weekly newspaper distributed free in Bradenton Beach, reported in its April 15, 2015 edition a story covering the recall and stated:

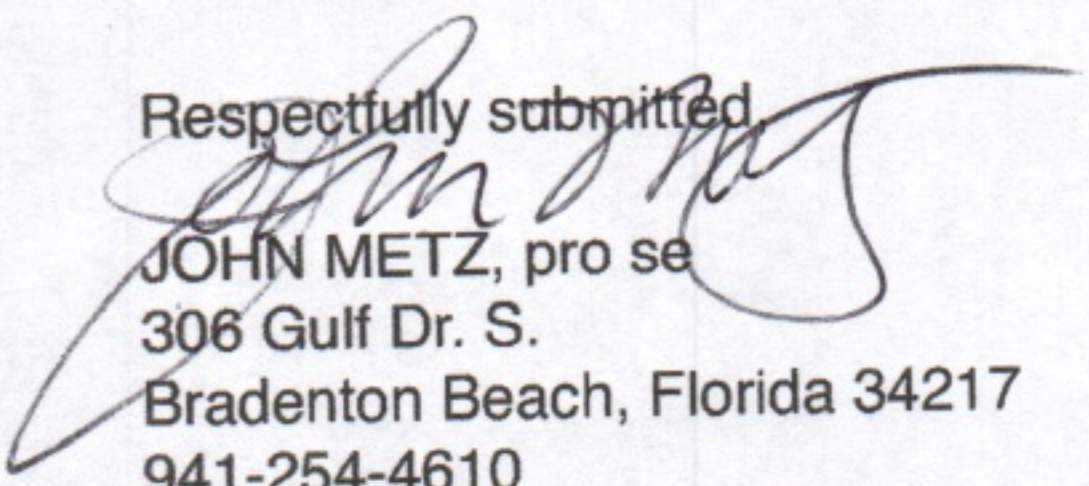
"State law requires the elected official's written resignation be submitted at least 10 days prior to the first day of qualifying.

Clarke would have had to resign April 4 or earlier to retain his office until May 19 election, leaving immediate resignation as his only option." (Emphasis added)(Exhibit D -box added for reference only)

9. The next mayoral election in Bradenton Beach is scheduled for November 2015, in approximately six and one-half months from now.
10. I am informed and believe that Michael Bennett, Manatee County Supervisor of Elections, intends to print the recall ballots Monday, April 20, 2015 or Tuesday, April 21, 2015.
11. Because there remains less than one month before the scheduled recall election and the necessity to have mail-in ballots sent out and returned and the failure of candidate Clarke to comply with the Resign to Run Law, I request this Court strike Commissioner Clarke's name from said recall ballots per F. S. 99.012(5).

I declare under penalty of perjury that the foregoing is true and correct except to matters stated to be under information or belief and to those matters I believe them to be true.

Respectfully submitted,


JOHN METZ, pro se
306 Gulf Dr. S.
Bradenton Beach, Florida 34217
941-254-4610
metz1419@gmail.com

April 19, 2015

Points And Authorities

I.

REMOVAL FROM THE BALLOT IS THE LEGAL REMEDY FOR VIOLATING F.S. 99.012(3)(c) and (3)(g)

See Varn v. Vasilinda (2008) 985 S. 2d 1241 which confirmed the lower court's ruling and states:

"...Varn 'failed to comply with F.S. 99.012(3)(c) and (g) by not timely submitting his written resignation of his office with Leon County School [B]oard in accordance with the requirements of those statutory provisions' and that '[t]he only legal remedy available to the Court is his removal from the August 26, 2008, primary ballot.'"

See also F.S. 99.012(5) which states:

"If an order of a court that has become final determines that a person did not comply with this section, the person shall not be qualified as a candidate for election and his or her name may not appear on the ballot." (Emphasis added)

II

A RESIGNATION NOT FILED TEN DAYS BEFORE THE QUALIFYING DATE VIOLATES F.S. 99.012(3)(c)

F.S. 99.012(3)(a)-(c) reads:

"(3)(a) No officer may qualify as a candidate for another state, district, county, or municipal public office if the terms or any part thereof run concurrently with each other without resigning from the office he or she presently holds.

(b) The resignation is irrevocable.

(c) the written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek."

Commissioner Clarke's resignation was filed by the City Clerk on April 10, 2015 with an effective date about May 19, 2015. This filing was only 4 days prior to the qualifying date of April 14, 2015. Clarke violated the 10 day rule under subsection (3)(c).

Because Clarke's filing had an effective resignation date about May 19, 2015, a month AFTER the qualifying date of April 14, 2015, he also did not comply with subsection (3)(g).

See Lambeth v. Gluckler (1974) 302 So. 2d 429 where Lambeth was a town commissioner seeking to run for County Commissioner and filed his resignation on the FINAL day of qualifying together with a resignation "effective at a time and date to be set by the Town Commission, but in no event later than November 6, 1974."

The Lambeth court upheld the lower court enjoining the printing of Lambeth's name on the ballot saying:

"The trial court found that appellant Lambeth was subject to the provisions of section 99.012, F.S. 1973 and that he had failed to comply with the statute; that the letter tendering his resignation was not effective as a resignation by its express term until the date was acted upon by the town commission, by which time the qualifying period had expired."

So here, Clarke filed his postdated resignation 6 days late violating section (3)(c). Secondly, by postdating the effective date of his resignation to after the qualifying period, he also could not qualify under subsection (3)(g).

Further, the Lambeth decision is cited with approval in Gonzalez v. Vogel (1993)616 So. 2d 478. Gonzalez in footnote 5 states:

"However, we believe the dispositive fact was Lambeth's failure to have tendered his resignation to *anyone* until one day before expiration of the qualifying period, contrary to the express ten-day requirement of section 99.012." (Emphasis in original)

Like Gonzalez, Clarke undeniably filed his resignation contrary to the ten-day requirement.

III

CLARKE COULD HAVE REMEDIED HIS LATENESS BY RESIGNING PRIOR TO THE END OF QUALIFYING re 99.012(3)(g)

As noted above, Clarke's late filing was published in the newspaper while qualifying was still open. The article itself instructs Clarke on how to remedy his error. Clarke could have relieved himself of his lateness by filing a second resignation effective immediately or effective before the end of qualifying.

See F.S. 99.012(3)(g) which states:

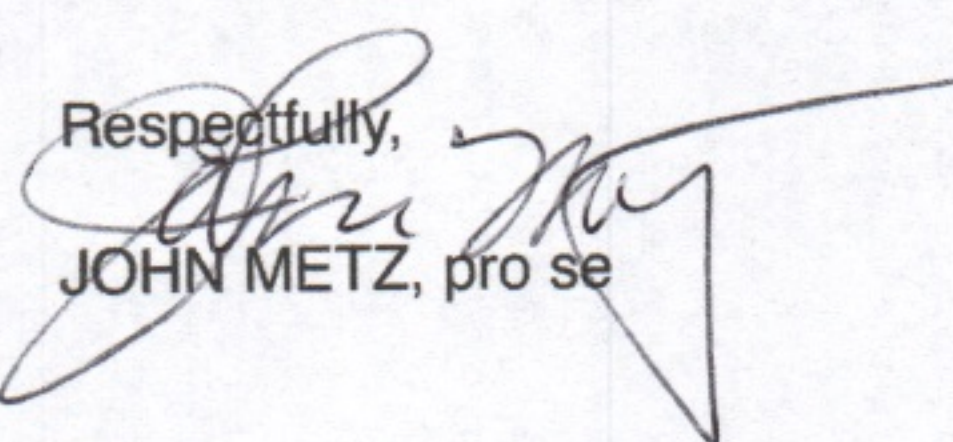
"Any officer who submits his or her resignation, effective immediately or effective on a date prior to the date of his or her qualifying for office, may the qualify for office as a nonofficeholder, and the provisions of this subsection do not apply."

Clarke has failed to utilize this provision to cure his failure to timely file under F.S. 99.012(3)(c) despite public notice in the Islander newspaper.

CONCLUSION

I respectfully request this Court to expeditiously use its powers of injunctive relief or mandamus to remove Commissioner Clarke's name from the recall ballot or for such other relief as this Court may deem appropriate.

Respectfully,


JOHN METZ, pro se

Copies emailed to:

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ward1@cityofbradentonbeach.com

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tsanclemente@cityofbradentonbeach.com

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Mayor William Shearon
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Committee to Recall William Shearon, Chairman Peter Barreda
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Governor Rick Scott
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Bradenton Herald
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The Islander
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AMI Sun

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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

IN RE: THE RECALL OF WILLIAM SHEARON, MAYOR OF THE
CITY OF BRADENTON BEACH, FLORIDA

WILLIAM SHEARON, as Mayor of the
City of Bradenton Beach, Florida; PETER
BARREDA, as Chair of the Committee to
Recall William Shearon; TERRI
SANCLEMENTE, as Pro Tempore City
Clerk of the City of Bradenton Beach,
Florida; MICHAEL BENNETT, as
Manatee County Supervisor of Elections,

Parties to Recall and Recall Election

BY ORDER OF THE CHIEF JUDGE

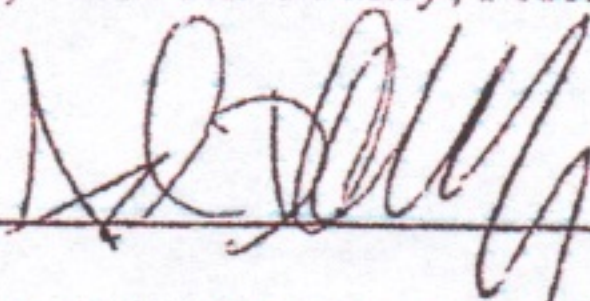
The Court having been advised that a petition for the recall of William Shearon, Mayor of the City of Bradenton Beach has been duly filed, and that pursuant to Section 100.361(4), Florida Statutes, the Chief Judge is mandated to fix the day for holding a recall election. It appearing that the 5-day period set forth in the Statute for the resignation of the Mayor subject to the recall has expired,

NOW, THEREFORE, IT IS ORDERED:

1. The date for the recall election is fixed on May 19, 2015.
2. The qualifying period for candidates seeking election to the office of Mayor shall be as follows:

Commencing at 10:00 a.m., April 14, 2015.
and ending at 12:00 p.m., April 17, 2015.

DONE AND ORDERED in Sarasota, Sarasota County, Florida, this 9th day of April, 2015.



ANDREW D. OWENS, JR., CHIEF JUDGE

Original: Clerk of Court, Manatee County

EXHIBIT "A"

RECALL PETITION AND DEFENSE OF MAYOR WILLIAM SHEARON

RECALL PETITION:

THIS IS A PETITION TO RECALL WILLIAM SHEARON, HOLDING THE OFFICE OF MAYOR IN THE CITY OF BRADENTON BEACH, COUNTY OF MANATEE, STATE OF FLORIDA, PURSUANT TO SECTION 100.361 (MUNICIPAL RECALL), FLORIDA STATUTES.

STATEMENT OF GROUNDS FOR THIS RECALL PETITION:

COUNT 1-MALFEASANCE. ON OR ABOUT FEBRUARY 6, 2014, MAYOR WILLIAM SHEARON VIOLATED THE SUNSHINE LAW BY ENGAGING IN A DISCUSSION WITH AND SOLICITING A RESPONSE FROM ANOTHER CITY COMMISSIONER VIA EMAIL ON THE TOPIC OF PENDING LITIGATION, A MATTER INVOLVING OFFICIAL CITY BUSINESS THAT WAS REASONABLY FORESEEABLE TO COME BEFORE THE CITY COMMISSION, AND WITHOUT ADVANCE NOTICE TO THE PUBLIC IN VIOLATION OF ART. 1, SEC. 24 (b), FLORIDA CONSTITUTION AND § 286.011, FLORIDA STATUTES.

COUNT 1-MALFEASANCE. ON OR ABOUT APRIL 21, 2014, MAYOR WILLIAM SHEARON VIOLATED THE SUNSHINE LAW BY ENGAGING IN A DISCUSSION WITH ANOTHER CITY COMMISSIONER VIA EMAIL ON THE TOPIC OF SPECIAL EVENTS, A MATTER INVOLVING OFFICIAL CITY BUSINESS THAT WAS REASONABLY FORESEEABLE TO COME BEFORE THE CITY COMMISSION, AND WITHOUT ADVANCE NOTICE TO THE PUBLIC IN VIOLATION OF ART. 1, SEC. 24 (b), FLORIDA CONSTITUTION AND § 286.011, FLORIDA STATUTES.

DEFENSE:

MY FELLOW BRADENTON BEACH VOTERS,
RECALL FACTS

DOES NOT CHALLENGE MY PERFORMANCE AS MAYOR. THE GROUNDS ARE UNPROVEN OPINIONS ABOUT TWO OLD EMAILS. THE NEXT REGULAR ELECTION IS NOVEMBER 3RD, A SPECIAL ELECTION WILL COST MONEY AND RESOURCES.

MY RECORD

CITY PIER, COMPLETED AHEAD OF SCHEDULE, UNDER BUDGET. CELL TOWER, CONSTRUCTED AND A NEW REVENUE SOURCE. CITY WEBSITE HAS BEEN UPDATED. DECADE'S OLD TECHNOLOGY HAS BEEN UPDATED. A NEW BUDGET SYSTEM IS NOW IN PLACE. CITY STAFF IS BEING HELD ACCOUNTABLE WITH TRANSPARENCY.

WHY THIS RECALL?

IT CHALLENGES MY LEADERSHIP. I AM TRYING TO CORRECT DECADES OLDS ISSUES, IT TAKES TIME. I AM TRYING TO PRESERVE OUR OLD FLORIDA COMMUNITY CHARTER AND PROTECT OUR COMPREHENSIVE PLAN AND CHARTER, WHICH YOU PUT IN PLACE. HELP ME PROTECT OUR CITY. IT'S BEING CHALLENGED BY WEALTHY NON-RESIDENTS WITH FINANCIAL INTERESTS ONLY.

WHAT TO DO?

DO NOT SIGN THIS RECALL PETITION
RE-ELECT ME NOVEMBER 3RD

YOUR DEDICATED MAYOR,
WILLIAM "BILL" SHEARON

REGISTERED ELECTOR'S SIGNATURE AND OATH

Printed Name: _____ Signature: _____

Address: _____ City/State: _____ Zip Code: _____

Manatee County Voters Registration Number or Date of Birth _____ Date Signed _____

OATH OF WITNESS

Under penalties of perjury, the undersigned hereby verifies that (s)he saw the person whose signature, which appears above, personally sign this petition, and that the signature appearing thereon is the genuine signature of the person it purports to be and that this petition was signed in the presence of the undersigned witness on the date indicated.

DATE: ____ / ____ / ____ Signature: _____ Printed Name: _____

Address: _____ City/State: _____ Zip Code: _____

EXHIBIT "B"

Jack Clarke
2601 Gulf Drive North
Bradenton Beach FL 34217

April 9, 2015

Office of the City Clerk
City of Bradenton Beach
Florida 34217

DATE REC'D 4/10 DATE COPY 4/10
MAYOR _____ COMMISSIONER _____
ATTORNEY _____ OTHER MEMO
OF PAGES 1

I am in receipt of the order from Chief Judge Andrew Owens Jr dated April 9, 2015 fixing a date of May 19, 2015 for the recall election of William Shearon and setting qualifying dates for said election. In accordance with Chapter 99. Florida Statutes, I hereby tender my resignation as Commissioner for Ward 1 for the City of Bradenton Beach to the officer before whom I qualified for said office.

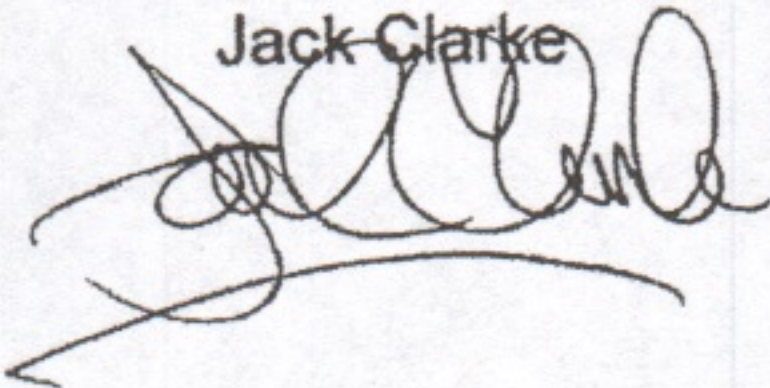
This resignation shall be effective no later than the earlier of the following dates:

1. The date wherein I would take office as Mayor of the City of Bradenton Beach if elected in the May 19, 2015 Recall Election of William Shearon; or
2. The date wherein another successor for the office of Mayor of the City of Bradenton Beach is required to take office subsequent to the above stated election.

It has been a privilege and a pleasure to serve the citizens of Bradenton Beach as Commissioner and Vice Mayor.

Respectfully,

Jack Clarke



Cc: Honorable Rick Scott
Governor, State of Florida USA

Department of State
State of Florida USA

EXHIBIT "C"

RECALL CONTINUED FROM PAGE 1

vote goes against the mayor.

Qualifying for the mayor's race began April 14 and the clerk's office was tasked by the mayor to rush the required advertising for the election.

Shearon said he is prepared to qualify for the ballot. A former city commissioner, he was elected to his first mayoral term in November 2013.

On April 13, Vice Mayor Jack Clarke resigned from office effective with the May 19 recall vote. Clarke said April 10 he planned to be a candidate in for the mayor's seat.

Clarke initiated forfeiture of office proceedings against Shearon last year based on his claim that the mayor mismanaged his office.

Clarke, who ran unopposed for his first term as commissioner in November 2013, on various occasions said he was not interested in being mayor.

"What I actually said was, when I took this job, being mayor was the furthest thing from my mind," Clarke said April 7. "I now believe that the best way to bring Bradenton Beach back on track is to replace the mayor and I am the person to do it."

Shearon said he believes running for mayor has been Clarke's agenda all along.

"He's made it clear in a number of public meetings that he doesn't want to be mayor," Shearon said. "Now, all of the sudden, he wants to be. That's fine. The more, the merrier."

The recall effort is being spearheaded by former Commissioner Pete Barreda. It is based on two alleged instances in which Barreda claims Shearon violated Florida's Government-in-the-Sunshine Laws. Shearon denied the allegations, stating he has never faced any charges for violating the Sunshine Law.

However, it's possible that Clarke must abide the state statute, "Resign to Run," enacted in 2007. An elected official must resign from his/her current elected office to run for another office.

Shearon, on the other hand, is running for the same office and is not required to resign.

But Manatee County officials were unsure April

10 if the rules for officials apply to recall elections. As of press time for The Islander, Scott Farrington of the supervisor of elections office had no answers.

Clarke's resignation will result in a vacancy on the commission. According to the Bradenton Beach city charter, when there is a commission vacancy, the commission nominates "willing and qualified" successors and votes among the nominees to fill the vacancy for the remainder of the term. All nominees must be from the ward from which the vacancy occurred.

Clarke is elected from Ward 1, which covers the

Qualifying cut short?

Bradenton Beach city officials and the Manatee County Supervisor of Elections Office have been trying to get a ruling from the Florida Division of Elections as to how and when Vice Mayor Jack Clarke must resign from office to run against Mayor Bill Shearon in the election to fill the remainder of Shearon's term in office, if Shearon is recalled.

Anyone who qualifies, including Shearon, is allowed to run for the mayor's seat but the state requires elected officials — not including the incumbent — to first resign.

The statute gives options for the resignation, but it appears it is not possible to remain in office given the qualifying date — April 14 — set April 10 by Chief Judge Andrew D. Owens Jr. of the 12th Judicial Circuit Court.

State law requires the elected official's written resignation be submitted at least 10 days prior to the first day of qualifying.

Clarke would have had to resign April 4 or earlier to retain his office until the May 19 election, leaving immediate resignation as his only option.

If so, the remaining three commissioners and the mayor would select a vice mayor and appoint a replacement for Clarke.

They have two meetings to accept nominees for the commission seat and make an appointment, or it falls to a drawing from the qualified nominees.

area from Gulf to bay and 28th to 23rd street. Commissioners Jan Vosburgh, Ed Straight and Robertson said they would not be interested in for mayor on the recall ballot.

The candidate qualifying period ends Friday, April 17. To qualify, candidates must submit 10 petition signatures, open account, designate a treasurer and pay the sum of elections a filing fee of \$48.

Read more, including the city attorney's view of the court, setting the election, at www.islander.com

According to state statute 99.012:

No person may qualify as a candidate for more than one public office if the terms or any part thereof run concurrently with each other.

No officer may qualify as a candidate for any municipal public office if the terms or any part thereof run concurrently with each other while resigning from the office he or she presently holds.

The resignation is irrevocable. The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek.

The resignation must be effective no later than the earlier of the following dates: The date the officer would take office, if elected; or the date the officer's successor is required to take office.

An elected municipal officer must submit his or her resignation to the original qualifying officer or a copy to the governor and the Department of State.

According to Bradenton Beach City Charter Article II, Section 7, filling of vacancies:

Whenever there is a vacancy, the commission nominates one or more willing and qualified successors. The commission then votes to fill the vacancy for the remainder of the term. If commissioners are unable to fill the vacancy after two meetings, a successor is chosen by lot from the nominees by the city clerk. All nominees shall be from the ward from which the vacancy occurred.

EXHIBIT "D"