



**Hallandale Beach**  
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## City of Hallandale Beach City Commission Agenda Cover Memo

Meeting Date:	Item Type:	1 <sup>st</sup> Reading	2 <sup>nd</sup> Reading	
<b>11/28/2022</b>	<input checked="" type="checkbox"/> <b>Resolution</b> <input type="checkbox"/> <b>Ordinance</b> <input type="checkbox"/> <b>Other</b>	Ordinance Reading	<b>N/A</b>	<b>N/A</b>
		Public Hearing	<input type="checkbox"/>	<input type="checkbox"/>
		Advertising Required	<input type="checkbox"/>	<input type="checkbox"/>
		Quasi Judicial:	<input type="checkbox"/>	<input type="checkbox"/>
File No.:				
<b>22-503</b>				
Fiscal Impact (\$):	Account Balance (\$):	Funding Source:	Project Number :	
<b>3,360.00</b>	<b>n/a</b>	<b>Reserves</b>	<b>n/a</b>	
Contract/P.O. Required	RFP/RFQ/Bid Number:	Sponsor Name:	Department:	
<input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>		<b>City Attorney's Office</b>	<b>City Attorney's Office</b>	
Strategic Plan Focus Areas:				
<input checked="" type="checkbox"/> <b>Financial</b>	<input type="checkbox"/> <b>Organizational Capacity</b>	<input type="checkbox"/> <b>Infrastructure</b>	<input type="checkbox"/> <b>Development, Redevelopment and Economic Development</b>	
Implementation Timeline				
Estimated Start Date: n/a    Estimated End Date: n/a				

**SHORT TITLE:**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA, AUTHORIZING PAYMENT OF LEGAL FEES INCURRED IN THE LEGAL DEFENSE OF COMMISSIONER MICHELE LAZAROW; PROVIDING FOR AN EFFECTIVE DATE.**

**STAFF SUMMARY:**

**Background:**

The Florida Commission on Ethics conducted a preliminary investigation of allegations that Commissioner Michele Lazarow violated Florida Statutes 112.3145, by failing to report a personal liability to a law firm on her 2019 CE Form 1, and Section 112.3148(8) by failing to file a "Quarterly Gift Disclosure" for attorney's fees paid by the public advocacy organizations which she leads.

For background purposes, the allegations in this matter relate to a lawsuit filed by the owner of various pet store franchises alleging, in part, that Commissioner Lazarow defamed him and his business when she appeared before a local government board advocating for the adoption of an ordinance prohibiting the sale of puppies. The City of Hallandale Beach has adopted a similar ordinance, sponsored by Commissioner Lazarow. Commissioner Lazarow was appearing before the local government in her capacity as President of her public advocacy organizations. The courts determined that the lawsuit filed against Commissioner Lazarow in her personal capacity was a SLAPP suit (Strategic Lawsuit Against Public Participation). These law suits attempt to stop public advocacy work by forcing individuals to defend themselves from personal liability in court, at great cost. Ultimately, the Plaintiff was ordered to pay the legal fees of Ms. Lazarow in that litigation.

However, in the interim, while the litigation was ongoing, the fees were paid, at least in part, by the public advocacy organizations which the Commissioner represented. The Plaintiff's attorney in the civil case filed a complaint with the Florida Ethics Commission with the allegations described above. Due to Commissioner Lazarow's position as an elected official, she is subject to financial and gift disclosure laws that would not otherwise apply to her.

The Florida Commission on Ethics determined at the preliminary hearing that there was probable cause of a violation of the gift disclosure requirement, but that, "given the totality of the facts involved in this particular case" it would not proceed to a hearing and would take no further action on the matter.

Commissioner Lazarow has requested reimbursement of legal fees paid for her defense in the ethics matter (not the civil matter) in the amount of \$3,630 and provided supporting invoices.

### **Legal Analysis:**

Florida common law affords public officials the right to legal representation at public expense against matters arising out of the performance of their public duties and while serving a public purpose. The governing body must make a determination that the underlying facts indicate the allegations arose from conduct occurring while the official carried out their public duties and while serving a public purpose. The allegations themselves need not be of acts serving a public purpose.

The underlying facts in this matter make this a much closer call than legal fee requests previously considered by the City Commission. Ultimately, the City Commission must determine if the facts rise to the level of the required legal thresholds. Therefore, the following in-depth legal analysis is being provided for your consideration:

1. Florida Commission on Ethics matters are compensable pursuant to Florida common law. *Ellison v. Reid*, 397 So.2d 352, 354 (Fla. 1st DCA 1981) This is a threshold consideration and the requirement is clearly met.
2. The official must have prevailed in the underlying matter. This is a common principle in relation to the reimbursement of attorney's fees. In this matter, while the Florida Commission on Ethics determined that there was probable cause to proceed with one of the charges, it also determined that it would not do so. This is akin to a determination not to prosecute or to voluntarily dismiss a complaint. Commissioner Lazarow was not found to have violated any ethics statutes (a finding of probable cause is not a determination of a violation). This is recognized in cases where probable cause is found, but the official prevailed at the subsequent hearing. *Maloy v. Bd. of Cty. Comm'rs of Leon Cty.*, 946 So. 2d 1260, 1261 (Fla. 1st DCA 2007). It appears that this requirement is met.

3. The context of the allegations must (1) arise out of or in connection with the performance of their official duties and (2) serve a public purpose. *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914, 917 (Fla. 1990). Commissioner Lazarow has requested payment of the invoices incurred in her defense against the allegations made to the Ethics Commission, **not any legal fees relating to the civil matter**. Therefore, the facts of the underlying civil case are arguably not relevant. It is arguably only the filling out of disclosure forms that the City Commission has to consider for the above test. In the past, the City has relied on the nature of the charges to satisfy the first prong. In other words, would the charge apply if the person was not an elected official? In this case, the actions alleged relate to the filling out of disclosure information and the ethics charges only applied because of Commissioner Lazarow's status as an elected official. However, it must be noted that the liabilities allegedly not disclosed were personal in nature. The question becomes whether the actions of the commissioner in filling out the required disclosure forms relating to personal liabilities, or failing to, fulfill a public purpose.

The City has had a consistent past practice of payment of outside counsel for the elected officials for legal fees incurred as a result of allegations arising from the performance of their public duties. There is no applicable section of the City Code or Charter governing the payment or reimbursement of these costs. If the City Commission determines that the common law test is not met, the Commissioner would be entitled to pursue litigation. If a court disagreed with the Commission, the Commission would be liable to Commissioner Lazarow, including potentially for attorney's fees. However, this matter is a very close call legally speaking and it is up to the City Commission to determine how to proceed.

**PROPOSED ACTION:**

The City Commission consider the attached Resolution to authorize payment of three thousand six hundred and thirty dollars (\$3,630.00) for legal fees in the defense of Commissioner Lazarow.

**ATTACHMENT(S):**

- Exhibit 1 – Proposed Resolution
- Exhibit 2 – Invoices for Legal Defense
- Exhibit 3 —Order of the Florida Commission on Ethics