M E M O R A N D U M

To: Mary-Ellen Harper

From: Nabors, Giblin & Nickerson, P.A.

Re: County Attorney Severance Agreement

Date: October 30, 2025

ISSUE: This memorandum is intended to provide legal requirements for a valid delegation of Board of County Commissioners (the "Board") authority and to determine whether the Board sufficiently delegated authority to the Board Chair and the County Manager to negotiate and execute a severance agreement with the County Attorney at its meeting held October 21, 2025.

FACTS: At a publicly noticed meeting held October 21, 2025, Commissioner Kennedy made a motion to terminate the employment of their County Attorney. This motion was seconded by Commissioner Hiers. There was nothing included in the motion or discussion that indicated the County Attorney was being terminated due to any alleged misconduct, as provided in Section 443.036(29), Florida Statutes.[1] Prior to the vote on the motion, the former County Attorney requested that the Board allow her a severance under the same terms as provided to the prior County Coordinator. Before any vote on the pending motion, the Board generally discussed negotiation of a severance agreement (the "Agreement") with the County Attorney to be accomplished by the Human Resources Director, the County Manager, and the Board Chair. From

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[1] Section 443.036(29), Florida Statutes, provides: "Misconduct," irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than $50, or theft of employer property or property of a customer or invitee of the employer.

(b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.

(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e)

1. A violation of an employer's rule, unless the claimant can demonstrate that:

a. He or she did not know, and could not reasonably know, of the rule's requirements;

b. The rule is not lawful or not reasonably related to the job environment and performance; or

c. The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

the audio recording of the meeting, it is not apparent that any amendment was made to the motion to terminate the County Attorney to include the proposed severance agreement. The Board then voted - three to two - to terminate the County Attorney.

After the termination vote, members of the Board and the former County Attorney further discussed that a severance agreement resulting from the negotiations could be accomplished with the signature of the County Manager and the signature of the Chair. The County Attorney stated that she would draft the Agreement to include a release of all claims, identical to the severance agreement that was negotiated with the prior County Coordinator. Although the audio alone was difficult to follow, the County Manager observed that four of the five commissioners spoke in favor of the severance agreement and the fifth commissioner remained silent. No formal vote was taken on the matter of the Agreement, and staff proceeded upon the direction provided by consensus of the Board. No member of the Board spoke in opposition to the Agreement.

The signed Agreement provides for 20 weeks of gross pay as severance pay along with a payout of accrued but unused vacation leave with no limitation and one quarter of accrued but unused sick leave, minus all withholdings. The Agreement represents that the leave payouts are in accordance with the County's adopted Personnel Policies and Procedures. The Agreement also releases all claims that the former County Attorney may have regarding her employment and termination, as described at the meeting held October 21, 2025, including claims pertaining to civil rights, the First Amendment, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Family Medical Leave Act, and others. These terms are substantially the same terms as set forth in the severance agreement of the prior County Coordinator. The Agreement is signed by the former County Attorney on her own behalf and the Board Chair on behalf of the County.

Based on the information provided by the County, the County Attorney began her employment with the County on November 1, 2021, and did not have an employment agreement. Levy County Board Policy HR-2025-1 recognizes the Policies and Procedures Manual, which includes the County's personnel policies. With regard to the County Attorney, this policy provides that it does not apply to "the County Attorney and all employees and volunteers reporting either directly or indirectly to the County Attorney;"[2] however, pursuant to the County's human resources department, notwithstanding this exclusion the County has applied the leave provisions of the policy to the County Attorney historically.

Levy County Resolution No. 2024-74 adopts rules for the conduct of Board meetings. Rule 8 of this policy generally governs voting by the Board, but such rules are silent on whether or under what conditions the Board can take official action via consensus and without a formal vote. Rule 9 of this policy further provides that "The presiding officer, or other County staff person

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[2] Based on this language, it appears that the County Attorney was exempt from (i) HR 2025-47 (governing sick leave and providing for sick leave payouts of ¼ of all unused sick leave when an employee has worked full-time for 6+ years and voluntarily leaves employment), (ii) HR 2025-48 (governing annual leave and providing for payout of annual leave up to 240 hours when employment is terminated), and (iii) HR 2025-27 (governing severance pay and providing for severance pay "under certain limited circumstances" pursuant to terms to be determined). In the future, the County should consider clarifying its personnel policies as it pertains to the County Attorney and staff of that office.

specified by the Board in its motion, is authorized to and shall sign all ordinances, resolutions, proclamations, contracts, agreements and other documents approved by the Commission."

ANALYSIS: The questions raised are (1) whether the direction of the Board and general consensus regarding the Agreement was sufficiently definite to constitute a valid delegation of authority and (2) whether the Agreement complies with state law on severance payments and policies on leave payouts. Each will be discussed in turn below:

Delegation

As outlined in more detail below, under Florida law the Board can delegate certain functions to officials or employees if the Board's action provides sufficient standards for decision making and the delegation is subject to sufficient oversight. In addition, the Board must actually take official action when making the delegation.

Florida Statutes explicitly provide that a board of county commissioners may delegate to its County Manager the power to "[p]erform such other duties as may be required by the board of county commissioners." §125.74(1)(q), Fla. Stat. In general, an official may exercise administrative discretion when the official's acts are guided by standards for decision making and subject to meaningful oversight. See Thomas v. City of West Palm Beach, 299 So. 2d 11, 14 (Fla. 1974) (holding that a city ordinance which delegated to city officials discretion to determine if dwellings were unfit or unsafe for human habitation if they met certain criteria were valid and a lawful delegation of discretion to the officials); Brock v. Ochs, 2016 Fla. Cir. Lexis 34967 (Fla. 20th Jud. Cir. Feb. 18, 2016) (holding that a Board validly delegated purchasing authority to its County Manager). A local official acts lawfully pursuant to ordinance or other direction when given "sufficiently definite guidelines" to restrain their delegated discretionary authority. United Sanitation Servs. Of Hillsborough, Inc. v. City of Tampa, 302 So. 2d 435, 438 (Fla. 2d DCA 1974). Delegation of power is ultra vires, unenforceable, and void ab initio where the delegation conflicts with existing law and the County's own code. See Gables Accountability Project v. City of Coral Gables, 2022 Fla. Cir. Lexis 1 at *3-*4 (Fla. 11th Jud. Cir. Jan. 6, 2022) (settlement agreement delegating City Attorney and City Manager power to approve a project in conflict with the City's zoning code was ultra vires, unenforceable, and void ab initio). Accordingly, any delegation of authority must provide sufficient guidelines and meaningful oversight and must also not conflict with existing law to be considered a lawful delegation of authority.

The Board must also take official action to delegate authority, and official action generally requires a vote of the Board. Courts have held that "[i]t is axiomatic that the County Commission speaks through its written Resolution" duly adopted by a vote of the Board as opposed to through a single Commissioner. Hillsborough Cnty. v. G.L. Acquisitions Corp., Inc., No. 2D2024-1958 at *3 (Fla. 2d DCA July 9, 2025)(citing Metro. Dade Cnty. v. Blumenthal, 675 So. 2d 598, 604 (Fla. 3d DCA 1995). Florida counties are required to conduct business at publicly noticed meetings open to the public under Chapter 286, Florida Statutes, the Florida Sunshine Law. One requirement of the Sunshine Law is that every member of a decision-making body present at a meeting must vote on every decision, ruling, or official act for which a vote is taken unless there is an applicable conflict for which the member can lawfully abstain from voting. § 286.012, Fla. Stat. (2025). In the specific context of termination of an employee who reports directly to the local government board, it takes more than mere discussion to constitute "official action of the [local government]. It is the motion, the second, and the majority vote that determines the [local government's] actions." City of Titusville v. Ackley, 770 So. 2d 755, 757 (Fla. 5th DCA 2000).

As opposed to a formal vote resulting from a definitive motion and second, the consensus apparently reached with regard to the County Attorney's severance agreement was merely a shared understanding reached during discussion that does not carry the weight of a legally binding decision by the Board. While the discussion and general shared understanding to negotiate the Agreement with the former County Attorney in substantially the same form as the severance agreement entered by the prior County Coordinator does provide ample standards for decision making and the Clerk to the Board provides sufficient oversight in execution of the Agreement[3] in accordance with Thomas v. City of West Palm Beach, 299 So. 2d at 14, without a formal vote this delegation arguably falls short and for the avoidance of any doubt the Agreement should be brought back to the Board for a formal vote of approval.

Severance Pay

Regarding public employee severance payments, Section 215.425, Florida Statutes, prescribes certain limitations. Subsection 4 of Section 215.425, Florida Statutes, provides as follows:

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> **(a)** On or after July 1, 2011, a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:
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> **1.** A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.
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> **2.** A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(29) , by the unit of government.
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> **(b)** On or after July 1, 2011, an officer, agent, employee, or contractor may receive severance pay that is not provided for in a contract or employment agreement if the severance pay represents the settlement of an employment dispute. Such severance pay may not exceed an amount greater than 6 weeks of compensation. The settlement may not include provisions that limit the ability of any party to the settlement to discuss the dispute or settlement.
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> **(c)** This subsection does not create an entitlement to severance pay in the absence of its authorization.

[3] The Clerk of the Circuit Court serving as ex officio clerk to the Board pursuant to Article VIII, section 1(d) of the Florida Constitution, and relevant statutes provides meaningful oversight.

(d) As used in this subsection, the term “severance pay” means the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for:

1. Earned and accrued annual, sick, compensatory, or administrative leave;

2. Early retirement under provisions established in an actuarially funded pension plan subject to part VII of chapter 112; or

3. Any subsidy for the cost of a group insurance plan available to an employee upon normal or disability retirement that is by policy available to all employees of the unit of government pursuant to the unit’s health insurance plan. This subparagraph may not be construed to limit the ability of a unit of government to reduce or eliminate such subsidies.

The Agreement provides for “20 weeks of gross pay as severance pay, minus all normal withholdings, which will be paid on the next scheduled County pay day after October 21, 2025 or as soon thereafter as payment is processed by the Clerk’s Office.” As it appears that the former County Attorney was terminated for convenience rather than for misconduct, as noted above, the Agreement’s payment of 20 weeks’ pay (minus normal withholdings) is consistent with Section 215.425(4), Florida Statutes.

The Agreement also provides for the County, “in accordance with its adopted Personnel Policies and Procedures,” to provide a payout of the former County Attorney’s accrued but unused vacation leave balance and one quarter of her accrued but unused sick leave, minus all normal withholdings. Payment of accrued but unused sick leave and vacation leave is permissible under Section 215.425(4)(d)1., Florida Statutes (exempting “earned and accrued annual, sick, compensatory, or administrative leave” from definition of “severance pay”). Under the County’s Personnel Policies and Procedures pertaining to sick leave, “[w]hen an employee has worked full-time for the Levy County Board of County Commissioners for 6 years or more, and voluntarily leaves employment, that employee will be compensated for any unused sick leave at the employees current regular hourly rate of pay for one-forth (1/4) of all unused sick leave credits accrued. In no case will an employee receive payment for unused sick leave credits accrued in excess of 480 hours.” Levy County Personnel Policies and Procedures No. 2025-47 – Sick Leave. Under the County’s Personnel Policies and Procedures pertaining to annual leave, when an employee leaves County employment, employees (non-EMTs and paramedics) receive up to 240 hours of vacation leave payout. Levy County Personnel Policies and Procedures No. 2025-48 – Annual Leave.

However, as described above, as written the County’s Personnel Policies and Procedures do not apply to the County Attorney. Further, there is no state law governing entitlement to payout of accrued sick leave and vacation leave upon termination of employment for county employees, and it is therefore a matter that may be controlled by adopted policy and/or by contract between the County and the employee. In this case, there is no written employment agreement which governed the former County Attorney’s employment with the County, nor does it appear that the County has formally adopted a policy governing accrual, use, and/or payout of unused sick leave and vacation leave for the County Attorney, but pursuant to the County’s human resources department, the County has applied the leave provisions of the policy to the County Attorney historically.

In light of the foregoing, while there is enough uncertainty regarding the County's obligation to pay out sick and annual leave to put this decision within the discretion of the Board, it would be advisable to abide by the County's historical treatment of leave for the County Attorney and treat this matter consistent with the same terms applicable to regular County employees under the Personnel Policies and Procedures or more favorable terms as the Board approves. Notably, application of the standards regarding vacation leave and sick leave set forth in the Personnel Policies and Procedures to the former County Attorney would result in her receiving a payout of the full amount of her vacation leave, but not receiving any compensation for her unused sick leave, due to the fact that she worked for the County for less than 6 years. However, the apparent Board consensus of the Board at the October 21, 2025, meeting would allow the County Attorney a sick leave payout consistent with the Personnel Policies and Procedures, as was provided to the former County Coordinator.

CONCLUSION AND RECOMMENDATION: While the Board appears to have reached a consensual understanding regarding the form and content of the Agreement with the former County Attorney that provided sufficient standards and oversight, without a formal vote this delegation arguably fell short of legal approval. Accordingly, for the avoidance of any doubt the Agreement should be brought back to the Board for a formal vote of approval to ratify its terms.

The Agreement, as written, is consistent with the requirements of Section 215.425, Florida Statutes. There is uncertainty with regard to application of the County's existing leave policies to the County Attorney, but it's advisable to abide by the County's historical treatment of leave for the County Attorney and treat this matter consistent with either the same terms applicable to regular County employees under the Personnel Policies and Procedures or more favorable terms (relating to sick leave payout) as the Board approves in the Agreement.

From a legal perspective, the Agreement, as currently written, protects the County from potential future litigation with the County Attorney over the terms of her employment or termination, including wrongful termination claims, discrimination claims, and other potential legal disputes, because such claims are waived in exchange for the severance payment and leave payouts as set forth in the Agreement. Given these risks and that the expense of litigation could easily dwarf the amount of the severance and leave payouts, it is recommended that the Board vote to ratify the Agreement as written and abide by its terms.