ORIGINAL

FLORIDA
COMMISSION ON ETHICS
APR 06 2015
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STATE OF FLORIDA
COMMISSION ON ETHICS
P. O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709

COMPLAINT
15-085

1. PERSON BRINGING COMPLAINT:

Name: Jeffrey Ashton Telephone Number: (407)836-2424

Address: 415 N. Orange Ave.

City: Orlando County: Orange Zip Code: 32792

2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

Current or former public officer, public employee, candidate, or lobbyist - please use one complaint form for each person you wish to complain against:

Name: Colleen Reilly Telephone Number: 407-316-0393

Address: c/o Stovash, Case and Tingley PA. 220 N. Rosalind Ave.

City: Orlando County: Orange Zip Code: 32801

Title of office or position held or sought: Interim Orange County Clerk of Court

3. STATEMENT OF FACTS:

Please explain your complaint fully, either on the reverse side of this form or on additional sheets, providing a detailed description of the facts and the actions of the person named above. Include relevant dates and the names and addresses of persons whom you believe may be witnesses. If you believe that a particular provision of Article II, Section 8, Florida Constitution (the Sunshine Amendment) or of Part III, Chapter 112, Florida Statutes (the Code of Ethics for Public Officers and Employees) has been violated, please state the specific section(s). Please do not attach copies of lengthy documents; if they are relevant, your description of them will suffice. Also, please do not submit video tapes or audio tapes.

4. OATH

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief.

SIGNATURE OF COMPLAINANT

STATE OF FLORIDA
COUNTY OF Orange

Sworn to (or affirmed) and subscribed before me this 31 day of March, 20 15, by Jeffrey Ashton.
(name of person making statement)

(Signature of Notary Public - State of Florida)

NOTARY PUBLIC STATE OF FLORIDA
SAMANTHA GARCIA
MY COMMISSION # FF 027473
EXPIRES: July 29, 2017
Bonded Thru Budget Notary Services

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ✓ OR Produced Identification ____
Type of Identification Produced:

CE FORM 50—EFF. 4/2008

Jurisdiction of the Commission: The Commission on Ethics has the authority to review and investigate complaints concerning possible breaches of the public trust (violations of the State's ethics laws) by public officers, public employees, and similar persons involved with state and local government in Florida, including Executive Branch lobbyists. Complaints about the actions of Judges should be brought to the Judicial Qualifications Commission, and complaints against attorneys in private practice should be made to The Florida Bar.

Procedures followed by the Commission: The Commission follows a three-stage process when it considers complaints.

The first stage is a determination of whether the allegations of the complaint are legally sufficient, that is, whether the complaint indicates a possible violation of any law over which the Commission has jurisdiction. If the complaint is found not to be legally sufficient, the Commission will order that the complaint be dismissed without investigation and all records relating to the complaint will become public at that time.

If the complaint is found to be legally sufficient, the investigative staff of the Commission will begin an investigation. The second stage of the Commission's proceedings involves this investigation of the complaint and a decision by the Commission of whether there is probable cause to believe that there has been a violation of any of the ethics laws. If the Commission finds that there is no probable cause to believe that there has been a violation of the ethics laws, the complaint will be dismissed and will become public at that time.

If the Commission finds that there is probable cause to believe there has been a violation of the ethics laws, the complaint becomes public and enters the third stage of proceedings. The third stage requires that the Commission decide whether the law actually was violated and, if so, what penalty should be recommended. This stage requires a public hearing (trial) at which evidence would be presented.

Attorney's Fees: If the complaint is dismissed, the person against whom the complaint is filed can file a petition to have the complainant pay his or her attorney's fees, which will be awarded after a hearing if the Commission finds that the complaint was made with a malicious intent to injure the official's reputation, the complainant knew that the statements made about the official were false or made the statements about the official with reckless disregard for the truth, and the statements were material.

Confidentiality: The Commission cannot accept anonymous complaints and cannot keep the identity of the complainant or any witness confidential. A complaint, as well as all of the Commission's proceedings and records relating to the complaint, is confidential and exempt from the public records law either until the person against whom the complaint is made waives confidentiality, or until the complaint reaches a stage in the Commission's proceedings where it becomes public. The Commission's procedures on confidentiality do not govern the actions of the complainant or the person against whom the complaint is made.

Legal Counsel: Both the complainant and the person complained against can be represented by legal counsel during the Commission's proceedings.

Other Information: More information about the ethics laws and the Commission's responsibilities is available at the Commission's website, www.ethics.state.fl.us, which contains publications, rules, and other information.

JEFFREY L. ASHTON
STATE ATTORNEY
NINTH JUDICIAL CIRCUIT
ORANGE AND OSCEOLA COUNTY, FLORIDA

LINDA DRANE BURDICK
CHIEF ASSISTANT STATE ATTORNEY

RICHARD I. WALLSH
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

March 31, 2015

As the elected State Attorney of the Ninth Judicial Circuit I request that you initiate an investigation of former Interim Clerk of Court for Orange County Florida, Colleen Reilly, for possible violations of F.S. 112.313(6). These possible violations are reflected in the attached investigative summary prepared by the Florida Department of Law Enforcement, and relate to her attempts to obtain substantial funds, from that agency, allegedly due to her as a severance package, while still employed.

While we have not found the evidence sufficient to warrant the filing of criminal charges, the conduct of Ms. Reilly appears to be rather self-serving and appropriate for examination by the Commission. The entire investigative packet and all attachments are available from my office if you wish to consider them. We will be happy to lend whatever additional assistance the Commission might require in completing this inquiry.

Sincerely Yours,

Jeffrey L. Ashton
State Attorney
Ninth Judicial Circuit

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415 NORTH ORANGE AVENUE - P.O. BOX 1673 - ORLANDO, FLORIDA 32801
407-836-2400

Florida Department of Law Enforcement

Case Number: OR-14-0092

Ninth Judicial Circuit of Florida

Investigative Summary:

F.S.S. 812.014(2)(a)1

Grand Theft

Incident Dates: May 2013

Case Agent:
Special Agent Julie Bressin

SUBJECTS:

Stephan W. Carter
2153 Chinook Trail
Maitland, Florida 32751
White / Male
DOB: January 16, 1955

Colleen M. Reilly
Stovash, Case & Tingley, P.A.
220 N. Rosalind Avenue
Orlando, Florida 32801
White / Female
DOB: April 3, 1957

INCIDENT LOCATION:

Orange County Clerk of Court
425 North Orange Avenue
Orlando, Florida 32801

INVESTIGATIVE SUMMARY

FDLE Initial Complaint

On April 16, 2014, the Florida Department of Law Enforcement (FDLE) received a written request for assistance from Orange County Clerk of Court Eddie Fernandez in reference to official misconduct allegations against former Interim Clerk of Court Colleen Reilly and General Counsel Stephan Carter. The allegations pertained to their acceptance of severance payouts while continuing employment with the clerk's office.

As part of the request, Clerk Fernandez provided 217 pages of records, Bates Stamped OCM 0001 through OCM 0217. FDLE Special Agent (SA) Julie Bressin obtained and reviewed the following:

- Correspondence between Clerk Fernandez and the Rumberger, Kirk & Caldwell, P.A., Attorneys at Law, regarding an initial review of the clerk's office documents
- Clerk's office human resource and payroll records
- Printed email correspondence and handwritten notes

Review conducted by the Law Firm of Rumberger, Kirk & Caldwell (RI-2)

Prior to contacting the FDLE, Clerk Fernandez retained a private law firm to review clerk's office records related to the severance payouts. The following information is based on the findings Attorney Daniel J. Gerber provided to Clerk Fernandez:

- Reilly entered into an employment contract for her position as Chief Administrative Officer (CAO), effective December 7, 2009, for as long as Lydia Gardner remained Clerk.
- Carter entered into an employment contract for his position as General Counsel (GC), effective January 2005 and extended indefinitely via amendment.
- On May 10, 2013, the following payouts occurred:
  - Reilly received $115,329.60 (sev/bonus)
  - Carter received $106,387.20 (sev/bonus)
  - Carter received $25,826.23 (vacation leave)
  - Carter received $24,229.68 (sick leave)
- "It appears these disbursements may be inconsistent with the terms and intent of the employment agreements."
- "The documents provided indicate that payroll employees in the clerk's office were concerned the payments were not being processed according to policy and practice."

- "Our initial review of these documents indicates that further investigation is required to determine exactly what happened, what these employees based their actions on, and whether their actions were proper, improper, ethical, or criminal."

- "With the information known at this time, a thorough investigation by a neutral objective investigator will best serve your organization. Because it is not clear yet whether there were any criminal acts, we recommend using an investigator that can first determine with increased clarity what actually transpired. This approach will help determine whether policy violations occurred and/or whether any laws were violated."

At the request of the law firm, Investigator Thomas Gonzalez, Esq., conducted a secondary review of the clerk's office records related to the severance payouts. The following information is based on his findings, which were also provided to Clerk Fernandez:

On March 26, 2014, Gonzalez interviewed both Carter and Reilly:

- Carter: The essence of the GC Agreement, Carter feels, was that he would work for Lydia Gardner, COC, and not the office of the COC, that his employment would last as long, but only as long, as Ms. Gardner was the Clerk and he would be paid severance if his employment ended for any reason other than his own voluntary resignation.

- Reilly: She declined to answer questions she thought called for legal interpretation. She did confirm that when she made the decision to terminate the agreements it was with Carter's legal advice. She did not have or seek any other opinion on the appropriateness of that action.

Concerns Gonzalez noted:

- Reilly terminated the CAO and GC agreements, but she did not terminate her own or Carter's employment with the clerk's office.

- Because they remained employed, neither can justify the payout of severance on any of the grounds for termination of the agreement provided in their contract agreements.

- Reilly's agreement, which included a specific durational term expressly tied to Gardner's tenure as Clerk, expired on Gardner's death. Her contract could not be terminated if it expired.

- According to Reilly's contract, the ending of her "employment with the clerk's office," for any reason, constitutes a termination of the agreement requiring the payment of severance; however, the employment did not end.

- The GC agreement provided for severance pay only upon termination "prior to expiration." The fact that Reilly acted is evidence of a realization that the contracts expired.

- Neither agreement would provide severance pay if the agreements were terminated by resignation.

- Florida law, section 215.425(1) prohibits the payment of additional compensation to public employees "after the service has been rendered or the contract made." The severance payout of the agreement was to pay what they "would have received" had they not been terminated. In fact, they were paid what they would have received increased in Carter's case by adding to his salary the amount of deferred compensation he had received under the GC agreement) and in addition to what they actually were paid for the same time period, in the same amounts, by virtue of their pre-existing at-will employment contract.

- Amendment to F.S. section 215.425(4)(a), limits severance payments to an amount no greater than "twenty weeks of compensation" in any contract that was renewed or renegotiated after July 1, 2011.

- There appears to be no contractual basis for the severance payments paid to Reilly or Carter while they remained employed.

- The GC agreement did not mention Gardner as the COC. According to a whereas clause, "this contract of employment should *expire* on a date that provides flexibility and discretion for the next Clerk." The establishment of that expiration date shows the intention of the parties was that the agreement would not survive Gardner's tenure as Clerk.

- Both agreements allow the Clerk to terminate the agreement "at any time," but not in the context of declaring the agreement terminated while the employment is continued under the same terms as before and not after the contract expired.

- If the GC agreement was read as being in effect after Gardner's death, (until the end of the Clerk's term), it still could not be terminated by Carter's voluntary resignation or under circumstances in which he remained employed.

- Given the issues involved in the decision to terminate the agreements, the COC should have obtained independent advice on the legality and appropriateness of the actions.

Human Resource Records (RI-3)

On June 12, 2014, Director of Talent Management Joann Gammichia and Director of Administrative Services Cathi Balboa provided additional records in furtherance of the investigation. Those records included several clerk's office policies, compensation manual, and a copy of the order appointing Colleen Reilly as the Interim Clerk of Court for Orange County.

Sick Leave Policy

- "An employee who terminates employment (whether due to resignation, involuntary termination, retirement, or death) and has six (6) or more consecutive years of service will receive a payout of 25% of their accrued sick leave benefit."

Court Order

- Clerk Lydia Gardner passed away on Wednesday, May 8, 2013.

- The order was signed by Chief Judge Belvin Perry on May 9, 2013, and issued pursuant to Florida Statute 28.09.

Personnel Files

On June 12, 2014, Director of Talent Management Joann Gammichia and Director of Administrative Services Cathi Balboa provided the personnel files for Carter and Reilly. In summary, the files contained the following:

Carter

1. One (1) employee contract agreement and two (2) amendments
2. Employee change notices (ECN) and support documentation
3. Resignation letter, dated April 1, 2014
4. Employment application, receipts, forms, and miscellaneous correspondence
5. Performance evaluations
6. Employee Policy Acknowledgement Form, dated January 31, 2013

Reilly

1. Two (2) employee contract agreements
2. Employee change notices (ECN) and support documentation
3. Resignation letter, dated April 1, 2014
4. Employment application, receipts, forms, and miscellaneous correspondence
5. Performance evaluations
6. Employee Policy Acknowledgement Form, dated January 10, 2013

Employment Contract Agreements (RI-4 and RI-5)

As part of the clerk's office standard operating procedures, employment contract agreements are maintained in the employee's personnel file with amendments and correspondence related to the contract.

SA Bressin obtained and reviewed the contracts and related amendments maintained within the personnel files for Carter and Reilly. In summary, the records reflect the following:

Carter ~ Contract

This agreement is made and entered into by and between the Orange County Clerk of Courts, a constitutional officer of Florida, and Stephan Carter, General Counsel to the Clerk.

Signed: January 13, 2005

WHEREAS,

- Carter has faithfully performed the duties of Legal Counsel since his appointment to that position on June 24, 2003.

- It would be mutually beneficial to have a contract of employment between the Clerk and General Counsel setting forth agreements and understandings which:

- Provide inducement for Carter to accept the job as General Counsel.
- Make possible full work productivity by assuring Carter's morale and peace of mind with respect to future security.
- Provide a just means of terminating the General Counsel's services at such time as the Clerk may desire to terminate his employment.

- "This contract of employment should expire on a date that provides flexibility and discretion for the next Clerk."

Term

- 2005 (1st day of 1st pay period) - January 6, 2009

Compensation

- Initial salary $115,000 (equal bi-weekly installments)
- Additional $11,000 shall be paid by the Clerk each year in equal bi-weekly installments, and such payments shall be deposited into the deferred compensation plan selected by the General Counsel.

Termination of Employment

- This agreement may be terminated prior to its expiration as follows:
  - "The Clerk may declare this agreement terminated at any time, and such termination shall take effect immediately or on such later date as the Clerk may specify."
- The Clerk shall promptly pay to the General Counsel:
  - The salary and unpaid deferred compensation that is accrued but unpaid as of the date of the termination.
  - An amount equal to the pro rata portion of his salary for all accrued but unused leave time.
  - An amount equal to the salary and deferred compensation that would have been received during the 180 days immediately following the date such termination takes effect, as if this agreement had not been terminated.
- "The General Counsel may terminate this agreement any time, but only after providing written notice to the Clerk of his intent to terminate, and such notice shall be delivered not less than 90 days before the date of termination."

Severability

"All agreements and covenants herein are severable, and in the event any of them shall be held invalid by a competent court, this agreement shall be interpreted as if such invalid agreements or covenants were not contained herein."

Complete Agreement in Written Document

"This written agreement embodies the whole agreement between the parties and there are no inducements, promises, terms, conditions, or obligations made or entered into by either the Clerk or General Counsel other than contained herein. This agreement shall inure to the benefit of the estate of the General Counsel. Except as otherwise provided herein, this agreement may not be modified or waived unless in writing and duly executed by both parties."

Carter ~ Contract Amendment
(correspondence)

Dated: January 7, 2009
To: Carter
From: Lydia Gardner

"As we have discussed, your employment contract expired on January 5, 2009."

- Continue operating under the same terms as before
- The term of the contract will be extended indefinitely
- Signed by Clerk Gardner and Carter

Carter ~ Contract Amendment
(correspondence)

Signed: February 5, 2013 (Clerk Gardner)

"Clarification of terms in Employment contract dated January 13, 2005."

Compensation

- The $11,000 is considered compensation under F.A.C. 60s-6.001(15) and not a fringe benefit.

- Although General Counsel indicated he will use it for an employee contribution into a deferred compensation plan, he is not required to do so.

Termination

- Termination by the Clerk includes the ending of the employment relationship for any reason other than voluntary resignation.

Reilly ~ Contract (1)

This agreement is made and entered into by and between the Orange County Clerk of Courts, a constitutional officer of Florida, and Colleen Reilly.

Signed: December 7, 2009

Employment: Chief Administrative Officer

Term

- "As long as the Clerk who executed this agreement remains Clerk. If the current Clerk leaves office before the expiration of her term, the resignation will be considered as a termination of employment by the Clerk, and the CAO shall be entitled to the payments described in paragraph 6."

Compensation

- Initial salary $135,000 (equal bi-weekly installments)
- Additional $15,000 shall be paid by the Clerk each year in equal bi-weekly installments, and such payments shall be deposited into the deferred compensation plan selected by the CAO.

Termination of Employment

- "The Clerk may declare this agreement terminated at any time, and such termination shall take effect immediately or on such later date as the Clerk may specify."
- The Clerk shall promptly pay to the CAO a sum equal to:
  - The salary and deferred compensation that is accrued but unpaid as of the date of the termination.
  - An amount equal to the pro rata portion of his/her salary for all accrued but unused leave time.
  - An amount equal to the salary and deferred compensation that would have been received during the 180 days immediately following the date such termination takes effect, as if this agreement had not been terminated.
- "The CAO may terminate this agreement at any time, but only after providing written notice to the Clerk of his/her intent to terminate, and such notice shall be delivered not less than 90 days before the date of termination."

Reilly ~ Contract (2)

FDLE Note: This agreement appears to be the operative contract.

Signed: not dated

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Employment: Chief Administrative Officer (CAO)

Term (below provision was revised):

- December 7, 2009 - "as long as Lydia Gardner remains Clerk."

Compensation (below provision was added):

- As of June 7, 2010, the salary shall be $143,000

Termination of Employment (below provision was added):

- "For purposes of this paragraph, employment shall be considered terminated by the Clerk when employment with the clerk's office ends for any reason other than voluntary resignation by the CAO."

Employee Change Notices (RI-6 and RI-7)

As part of the clerk's office standard operating procedures, employee change notices (ECN) are completed when there is a change in an employees' salary or movement (position). The ECN's are maintained in the employee's personnel file with any related documents (attachments) that authorized or supported the change.

SA Bressin obtained and reviewed the ECN's and attachments maintained within the personnel files for Carter and Reilly. In summary, the records reflect the following:

Carter

Effective date

1/3/2005

- Contract, signed by Clerk Gardner and Carter January 2005.

1/7/2009

- Contract extended indefinitely per Clerk Gardner's request.

5/13/2013

- "Rate of pay now including deferred compensation."

12/9/2013

- Merit Increase

3/28/2014

- Administrative Leave with Pay pending outcome of investigation.

4/1/2014

- Resignation

Reilly

12/7/2009

- Contract (1), signed by Clerk Gardner and Colleen Reilly December 2009.
- Contract (2), signed, but not dated.

5/8/2013

- "CAO on leave of absence while serving in court appointed clerk of court position...court appointment attached."

1/27/2014

- "End of acting pay/job title court appointment."

1/27/2014

- Merit Increase

3/28/2014

- Administrative Leave with Pay pending outcome of investigation.

4/1/2014

- Resignation

Interview of Joann Gammichia

On June 11, 2014, SA Bressin conducted a sworn, audio recorded interview of Joann Gammichia, Director of Talent Management, at the Orange County Clerk's Office. In summary, she stated the following:

In May 2013, immediately after Gardner's death, the Honorable Belvin Perry appointed Chief Administrative Officer (CAO) Reilly as the Interim Clerk of Court. Gammichia was the manager of talent management (since September 2011) and she reported to Cathi Balboa. In January 2014, Reilly promoted Gammichia from manager to director.

The talent management department handled human resource matters such as terminations, compensation, training, and employee benefits. They also reviewed and processed employee change notices (ECN) and worked "hand in hand" with payroll.

Generally, the manager of the department initiated an ECN any time there was a change in the employee's status (transfer, pay, termination). An ECN required signatures, but the necessary

signatures depended on the type of change. For instance, when money was being paid out, there should be two (2) signatures: the manager or assistant and someone in the next level chain of command.

- On or about May 10, 2013, Carter approached Payroll Administrator Tracy Gasinski with employment contract(s) and wanted to be paid out per the terms.
    - Gasinski issued the check(s).
- On or about May 16, 2014, Carter approached Gasinski again because he felt Gasinski misinterpreted the leave (vacation and sick) payout provisions specified in the contracts.
    - Carter wanted his "sick leave" figures recalculated in a different way that was "to his advantage," even though it violated clerk's office policy.
    - Gasinski asked CFO Mike Murphy to help, but he thought this was an employment issue for talent management; therefore, Gasinski brought this to Gammichia's attention.
    - At this time, Gammichia was unaware that Gasinski already issued check(s).
- Gammichia was concerned because the authorization was verbal and "Steve was not only asking for his check, he was asking for one to be completed for Colleen too." Carter had both contracts and said, "Here's for me, here's for Colleen, do them both." He wanted the checks that same day.
- On May 21, 2013, Gammichia told Gasinski not to process the payouts without proper documents to support terminating the contracts, but not their employment. Gammichia called Balboa and notified her about the situation.
    - In the meantime, Carter confronted Gammichia in her office and demanded she "get out of his personal business."
- Gammichia and Balboa called Reilly to see if she was aware of the situation because she was at home sick. Reilly was angry that talent management was involved and said Gammichia had "no business in this, butt out."
- After Balboa attended a meeting with Reilly, Carter, and Mike Murphy, she informed Gammichia they would process the payouts.
- According to Gammichia, Carter and Reilly did not originate any paperwork: "it was all undercover," and they "had no intention of putting any of this paperwork through." They said it had "nothing to do with employment…it was a separate personal issue."
- Talent management initiated the ECN's:
    - "Colleen didn't resist," but she did not like that Gammichia included verbiage that would explain "what are we doing, what are we paying?"

- Since Reilly and Carter said it was a contract termination, talent management used those words "just to have something."
- Reilly "wouldn't sign it with all the details," so Gammichia kept the drafts for her own records. Reilly signed the final ECN's maintained in their (Carter and Reilly) personnel files, which were "pretty general" and did not include amounts.
- Talent management used the same comments ("end of contract and payout") for both ECN's, but they used the "other" code for Carter, whereas they used the "termination" code for Reilly.

- Gammichia was uncomfortable with the overall situation for several reasons:
  - Carter was the lawyer, Reilly is "the boss," and "both are very confrontational."
  - When the payout was challenged, the challenge went to Reilly and she said it was "good to go."
  - Employees didn't know if they had the ability to seek outside counsel. Since Carter was the internal attorney, "we felt trapped" and Reilly had the final authority as the Clerk.

Gammichia Typed Statements

SA Bressin obtained and reviewed the typed statements that Clerk Fernandez provided on behalf of Gammichia. In summary, the statements reflect the following:

Statement, dated May 2013

FDLE Note: During the interview with SA Bressin on June 11, 2014, Gammichia confirmed she prepared this statement from her original notes, in May 2013.

On May 21, 2013, Gasinski called Gammichia regarding the payouts. "She (Gasinski) had been told to pay out Steve Carter and Colleen's contract by Colleen, but there were areas she was not clear on."

- As Gasinski and Gammichia attempted to get paperwork together, Carter pressured Gasinski to get the check printed. He wrote in an email that Reilly wanted it done before Carter left that day.
- "Tracy had actually started to work on May 20th, but couldn't complete it as she still had questions."
- Carter approached Gammichia after he heard from Gasinski that Gammichia said not to print the check without something in writing authorizing the payout.

Gammichia called Balboa at lunch; upon her return, both were present during a phone call to Reilly. "Colleen explained what we should do." Gammichia and Balboa reviewed the paperwork again and they still felt "uncomfortable as it seemed what we were doing and what was stated in the contract and the letter of intent was different."

- "Basically the payout included the deferred comp as salary, the vacation and full sick pay for Steve, and 180 days of compensation."

- "The main issue was that they were both still employees and the contract was to protect them if they lost their jobs. They were not losing their jobs and their status was not changing. The only change was they did not have the protection of the contract."

On May 22, 2013, "Colleen called a meeting with Mike and Cathi and Steve. The result was that we paid out as requested."

- Reilly "has the authority to make these requests and payments. In essence, she is ending the contract with Steve and he no longer has the contract. The same with her, she is paid out and no longer has the contract. However, both remain employees of the clerk's office. Colleen will be on a leave of absence while she fills the role of Clerk Ad Interim."

Statement (clarified), dated February 12, 2014

FDLE Note: Clerk Fernandez requested a second statement from Gammichia to clarify the terms used to end the contract agreement in May 2013.

- On May 21, 2013, Gammichia was asked by Payroll Administrator Gasinski how to interpret a payout of a contract that had been set up between Reilly and Gardner and also a similar contract with Carter and Gardner, Clerk of Court.

  - The request was unusual because all authorizations for payment go through Talent Management by way of an ECN, and several signatures are required.

  - In this case, however, Carter took his contract, along with Reilly's contract, directly to the payroll clerk and requested the payroll clerk payout the terms of the contracts.

  - Gasinski could not reconcile her interpretation of the contract with Carter's interpretation. She called CFO Mike Murphy for clarification and he referred her to Talent Management, as it was an employment contract.

- Balboa, Murphy, and Gammichia "felt the contract was to be paid out if employment was being terminated. Since employment was not being terminated, it did not seem correct. This issue was challenged with Carter and Reilly."

  - As a result, Reilly "ended" both contracts and determined they should be paid out per the terms of the contract.

- An ECN was generated for Reilly which stated action code 24 (termination), and included the following comment: "End of contract payout of $83,295.20, 180 day salary per contract. Vacation and sick leave will remain intact."

  - That ECN was changed at Reilly's request to read action code 25 (other) with the comment "CAO on leave of absence while serving in court appointed position."

- An ECN was generated for Carter which stated action code 25 (other) with the comment "End of contract payout of $106,449.01 ($23,980.50 vacation, $5,624.51 sick, $76,844.00 180 days salary per contract). Carried over 56 hours of vacation."
    - That ECN was changed at Reilly's request to read action code 25 (other) with the comment "Rate of pay now including deferred compensation."

Email from Gammichia to SA Bressin

On August 1, 2014, Gammichia provided the following summary of events:

- Sometime between May 26 and 28, 2013, Gammichia initiated and created ECN's for Reilly to sign because Gammichia needed documentation regarding the pay issues.
- Gammichia presented this to Reilly for her signature sometime between May 27 and 28.
- After Reilly reviewed the ECN's, she asked Gammichia in person to redo them without the details ("meaning the payout dollar amounts, the comments on vacation and sick time"). Normally this area of the form was used to explain details that are not explained in any other portion of the form.
- After Gammichia left Reilly's office on May 28, she sent an email to Gammichia and asked her to regenerate the new ECN's. Gammichia believed Reilly sent this in an email because they did not discuss the issue of Carter's deferred comp nor the fact that Reilly would be on leave of absence. Reilly, however, wanted that reflected in the ECN.
- On May 28, Gammichia presented Reilly with the changed forms for her signature. Reilly signed the revised forms and they became the official document in the file.

Unofficial ECN's and Handwritten Notes **(RI-8 through RI-10)**

SA Bressin obtained and reviewed records Clerk Fernandez provided in reference to the ECN's drafted for Carter and Reilly. In summary, the records reflect the following:

Carter

Effective date

5/20/2013 (not signed)

Typed: "End of contract payout of $106,449.01 ($23,989.50 vacation, $5,624.51 sick, $76,844.00 180 days salary per contract). Carried over 56 hours of vacation."

Notes: "Term of" contract payout of...salary "compensation" per contract "terms."

5/20/2013 (not signed)

Typed: "Rate of pay now including deferred compensation."

Notes: "Copy changed 5/28/13 per COC."

5/13/2013 (signed copy also in personnel file)

Date Stamped: May 28, 2013

Typed: "Rate of pay now including deferred compensation."

Notes: 5/20/13 crossed out

Reilly

5/8/2013 ~ "Termination" (not signed)

Typed: "End of contract payout of $83,295.20 (180 days salary per contract) Vacation and sick hours will remain intact."

Notes: "Term of" contract payout of...salary "compensation" per contract "terms."

5/8/2013 ~ "Other" (not signed)

Typed: "CAO on leave of absence while serving in court appointed clerk of court position...court appointment attached."

Notes: "Copy changed 5/28/13 per COC."

5/8/2013 (signed copy also in personnel file)

Date Stamped: May 28, 2013

Typed: "CAO on leave of absence while serving in court appointed clerk of court position...court appointment attached."

Interview of Cathi Balboa

On June 11, 2014, SA Bressin conducted a sworn, audio recorded interview of Balboa, Director of Administrative Services, at the Orange County Clerk's Office. In summary, she stated the following:

Balboa has been the Director of Administrative Services since August 2010. Also, Balboa took over as the acting Chief Administrative Officer (CAO) in May 2014 after Reilly was no longer employed at the clerk's office. Prior to her departure, Reilly was the acting Clerk of Court and the CAO, "she did both."

- Clerk of Court Lydia Gardner passed away on May 9, 2013, and the Honorable Belvin Perry appointed Reilly later that same evening.

- On May 21, 2013, Carter approached Payroll Administrator Tracy Gasinski and instructed her to process payout checks for himself and Reilly, per the terms of their contracts.
    - Carter said Reilly authorized the payouts and they would both continue working at the clerk's office as regular at-will employees.
    - Carter provided Gasinski with the figures for calculating the payouts.
    - Carter wanted his vacation paid out; however, the clerk's office does not pay out for vacation unless there is a buy back vacation program offered organization wide.
    - Carter said his sick time was authorized to be paid out at 100 percent; however, per policy, the clerk's office paid 25 percent. Even then, sick time was, paid out only if employment actually ended. There was never a buy back sick leave program offered.
- Gasinski felt "threatened" or "coerced" into doing something she knew required more than verbal authorization.
    - An employee change notice (ECN) is a document the clerk's office uses to record personnel actions such as added responsibilities, lateral transfers, promotions, demotions, and retirement.
    - An ECN is usually initiated by a manager and then processed through the talent management department.
- Gasinski reported the conflict to Talent Management Supervisor Gammichia.
    - In response, Gammichia told Carter not to contact Gasinski again. According to Balboa, however, "he still did, he went back and contacted her a couple other times," and Carter said that "Colleen wants this done, this day."
- During lunch, Balboa received a phone call from Gammichia regarding the incident between Carter and Gasinski.
    - Balboa became involved because there was a policy against "bullying."
- After lunch, Balboa and Gammichia called Reilly, who was home sick, to verify she was aware of the payout request.
    - Reilly immediately asked, "How'd you get involved in this?"
    - Balboa explained that an employee felt "coerced" to do something against policy – specifically, paying out money without documentation.
    - Balboa and Gammichia mentioned calling a labor attorney for a second opinion, but Reilly said she authorized the payout and "to stay out of it."
- Balboa thought this was Carter's initial request for the payouts and she felt suspicious about the timing for several reasons.

- First, the payouts were requested the same day they "run payroll" (May 21, 2014). Second, Reilly was out of the office yet there was a "rush" about processing the payouts that day.

- Payroll was every two (2) weeks on Tuesday and funds were available on Thursday.

- On May 22, 2013, Balboa attended a meeting with Reilly (at her request), Carter, and Mike Murphy:

  - Reilly asked Balboa, "What do you think is your role in the organization?" In response, Balboa said her role was to look at all employee issues and to "minimize or mitigate risk to the organization."

  - Reilly asked "where our loyalties lied." Balboa became irritated because "you don't ask that question unless you're trying to intimidate someone." Both Murphy and Balboa said they were loyal to the clerk, but Balboa added that she had to "enforce the policies."

  - Balboa told Reilly she should be happy they were involved because it meant "our policies worked." Reilly told Murphy and Balboa, "This is a private matter, neither of you should be involved in it...this is our personal business."

  - Reilly talked about the contract(s) and said, "The next clerk may not honor it," Balboa, however, thought Reilly and Carter were trying to get a severance agreement while they still could.

  - The meeting was the only interaction Balboa had with Carter in reference to the payouts.

  - After the meeting, Reilly asked Balboa how she knew about the contracts. Balboa said Lydia Gardner mentioned the contracts two (2) or three (3) years earlier when they were doing merit planning and Balboa asked for copies.

During the interview, Balboa explained that the purpose of a contract was to mitigate risk to the organization if an employee resigned (notice required) and to protect the individual against termination (six (6) month salary).

- Balboa had seen Carter's contract and knew it did not specify a payout of 100 percent for sick leave.

- Both Gammichia and Balboa reviewed the figures Carter provided to Gasinski, but "nobody could come up with the numbers he was coming up with."

- Balboa believed the contract(s) pertained to a severance because the verbiage read:

  - If the person under contract wanted to leave their employment, sixty (60) day notice was required.

  - If the clerk didn't win the election or they were dismissed for some reason, they would receive six (6) month salary.

- All severance agreements originated from talent management and they were reviewed by Labor Attorney Wayne Helsby because Carter said he had no expertise in employment law.

- In the past, severance payouts have been offered to employees who were not performing in the job but had not done anything "egregious" enough to be fired.

- Usually, Gammichia and Balboa contacted Helsby for his recommendation, directly. Sometimes Reilly was present, but Carter was only there once in 2011 during the discussion of a policy issue where money was processed without two (2) signatures.

- There has never been a payout where an employee subsequently continued their employment. The employee was given an opportunity to resign in lieu of being fired.

- Reilly and Carter continued their employment with the clerk's office; they were never on a leave of absence.

- Reilly changed the "org chart" to reflect the CAO position was vacant and she was the interim clerk; however, "from the day to day operations, nothing changed."

- Clerk's office senior staff report to the CAO and Reilly still held the weekly senior staff meetings.

- As the acting clerk of court, Reilly had the same responsibilities as an elected clerk such as deputizing court employees and attending judicial sessions.

- The clerk's office paid a total of approximately $277,000 to Carter and Reilly, not including amounts contributed to FICA and the Florida State Retirement, which brought the clerk's office loss to approximately $350,000.

- Balboa believed the payouts may have gone undetected if "our employee had not felt threatened" since it was the only thing that brought this to Balboa's attention.

Handwritten Notes (RI-14)

SA Bressin obtained and reviewed the records with handwritten notes that Clerk Fernandez provided on behalf of Balboa. In summary, the records reflect the following:

May 21, 2013

- "Received a phone call from Joann while I was at lunch saying we had a situation with Steve Carter telling Tracy that Colleen said to pay out his contract and hers."

- Balboa and Gammichia called Reilly at home to see if she was aware that Carter was asking for large checks to be cut for him and her on a verbal, "Colleen said."

- "Colleen confirmed she knew that Steve was talking to FSD (Financial Services Department) and she had authorized."

May 22, 2013

- The notes reflected that a meeting occurred on that day between her, Carter, Reilly, and Murphy. The notes also quoted the questions that Reilly asked, "What do you think your role is in this organization?" and "Where does your loyalty lay?"

Miscellaneous Payroll Calculations (RI-14)

On May 20, 2013, Gasinski emailed Carter and proposed the following payout amounts:

Carter

Type	Hours	Rate	Amount
Vacation	405.57	68.60	$27,822.10
Sick	327.96	17.15	$5,624.51
Sev/Bonus			$76,844.00

Total Payout: $110,290.61

Reilly

Type	Hours	Rate	Amount
Vacation	130.64	72.88	$9,521.04
Sick	94.65	18.22	$1,724.52
Sev/Bonus			$83,295.20

Total Payout: $94,540.76

On May 23, 2013, Gammichia noted several changes regarding the payout amounts. The handwritten notes, addressed to Balboa, were included on a document with proposed payout amounts consistent with the amounts actually paid (check dated May 10, 2013). The following is a summary:

"Cathi,

- Tracy was told this morning not to share this new change.
  - Salary amount has gone up
  - Def. comp being paid in wages for Colleen
  - Vac. put back in for Steve
  - Steve being paid vacation [sic] at 100%, not 25%
- Tracy was told to pull back the payroll that was run yesterday and adjust #'s. Therefore, the ECN's are incorrect, yet Tracy was told she couldn't share this.
- We can discuss at 4pm, just wanted to give you a heads up there are more changes."

Carter

Type	Hours	Rate	Amount
Vacation	349.57	73.88	$25,826.23 (left 56 hours per Carter)
Sick	327.96	73.88	$24,229.68
Sev/Bonus			$106,387.20

Total Payout: **$156,443.11**

Reilly

Type	Hours	Rate	Amount
Vacation	N/A	N/A	0
Sick	N/A	N/A	0
Sev/Bonus			$115,329.60

Total Payout: **$115,329.60**

Clerk's Office Finance Records (RI-16)

SA Bressin obtained and reviewed detailed payroll history printouts for Carter and Reilly. In summary, the records reflect the following:

On May 9, 2013, Carter and Reilly were issued a severance check, which included payout amounts for their vacation time and sick leave (Carter only). Subsequently, the checks were voided and new checks (dated May 10, 2013) were issued for greater amounts.

On or about May 23, 2013, Carter and Reilly were issued severance checks, which included payout amounts for vacation and sick leave (Carter only). The checks were back dated to May 10, 2013. The following is a summary:

Carter

Check date: May 10, 2013
Number: 90083

Type	Hours	Rate	Amount
Vacation	349.57	73.88	$25,826.23
Sick	327.96	73.88	$24,229.68
Sev/Bonus			$106,387.20

Gross: $156,443.11
Net: $99,125.45

Reilly

Check date: May 10, 2013

Number: 90084

Type	Hours	Rate	Amount
Vacation	N/A	N/A	0
Sick	N/A	N/A	0
Sev/Bonus			$115,329.60

Gross: $115,329.60
Net: $82,152.08

Interview of Michael Murphy

On June 12, 2014, SA Bressin conducted a sworn, audio recorded interview of Murphy, Chief Financial Officer, at the Orange County Clerk's Office. In summary, he stated the following:

Murphy has been employed with the clerk's office since 2003. He has been the chief financial officer for the past two (2) or three (3) years. As chief financial officer, Murphy reported to the chief administrative officer and he was in charge of financial services which included accounting and payroll. At the time of the incident, Murphy reported to Colleen Reilly.

- In May 2013, Carter approached Payroll Administrator Gasinski regarding a payout for the termination of his and Reilly's contracts with Clerk Gardner since she passed away.
  - Initially, Carter interpreted the contract and told Gasinski, "We need to payout on this."
  - Ultimately, Gasinski processed the payout checks based on how she and Murphy interpreted the contract.
- Carter had an issue with the payout amount. He thought he should be paid for 180 days, not six (6) months and he wanted 100% of his sick leave paid out.
  - Gasinski disagreed with Carter and felt his calculations were inaccurate.
  - Murphy helped Gasinski with the calculations and he agreed with Gasinski. They thought the contract specified six (6) months of severance pay whereas Carter wanted the amount calculated by the number of full days. Also, per clerk's office policy, 25% of sick leave was paid out, not 100%.
- Gasinski was uncomfortable making the changes without documentation or an employee change notice (ECN) generated from talent management.
  - Murphy recommended Gasinski contact talent management (Gammichia).
- Gammichia reported the conflict to Director of Administration, Cathi Balboa.
- "Fairly soon thereafter," Murphy and Balboa attended a meeting with Reilly and Carter, who "weren't happy that this many people knew about it" (the payouts) and "they were upset that we were questioning their authority."

- Reilly asked, "Why did this get out?" She also wanted to know "where his allegiance was." In response, Murphy said his allegiance was with the office of the clerk of the courts, not just the clerk.
- "We all brought up concerns that it should go through proper channels and be reviewed."
- Carter said the issue was a "contract dispute" and this was the way he interpreted the contract.
- Carter said, "I'm the attorney and I reviewed the contract and we're not gonna contact an outside attorney."
- The meeting concluded with, "this is what we're gonna do and I don't want to hear another thing about it."

- After the meeting, Gasinski was told to process the payments.
  - Murphy helped make sure the final calculations were correct, but he had no further involvement after the checks were issued, other than confirming that the general ledger reflected the amount that was actually paid out.
- Murphy reviewed one of the contracts (unsure which one) while helping Gasinski with the calculations, and he had several concerns regarding the payouts.
  - Murphy thought the "purpose of the contract" was to protect against terminations, and yet this "wasn't a termination."
  - In the past, the clerk's office offered employees a buyback program for vacation days, but no such buyback was occurring in this the case.
  - Generally, an employees' final paycheck was issued via "paper check," whereas the checks for Carter and Reilly were direct deposited.
  - Reilly and Carter continued working at the clerk's office; there was no break in employment after they were paid out.
  - Carter and Reilly were both paid out (180 days salary per the contract) and they both continued to receive their regular salaries during that time period.
  - Murphy disagreed with Carter's interpretation as to the salary compensation (180 days versus six (6) months) and "if we're not worried about anything then let's just have the labor attorney sign off on it, then there's no issue with it."
- Carter and Reilly argued that "the contract with Lydia is terminated, therefore this contract is terminated; therefore our rights to the contract should be executed."
  - Ultimately, the contracts were paid out for 180 days salary. Carter received 100% vacation (per policy) and 100% sick leave (against policy). Reilly did not have any vacation or sick time paid out.

- Both Carter and Reilly have reimbursed the money owed to the clerk's office.

Interview of Tracy Gasinski

On June 12, 2014, SA Bressin conducted a sworn, audio recorded interview of Gasinski, Payroll Administrator, at the Orange County Clerk's Office. In summary, she stated the following:

Gasinski has been employed with the clerk's office as the payroll administrator since 2006. Her job duties include processing the payroll (biweekly) and related paperwork for all clerk's office employees except sheriffs and judges. Gasinski also processed paperwork for payroll, including taxes, unemployment and worker's compensation, etc.

- The day after Clerk Gardner passed (May 8, 2013), Carter called Gasinski into a spare office. Carter spoke on behalf of Reilly and he said they both "should get a payout" since their contracts were terminated when Gardner passed away.
  - Carter had a list of what he wanted paid out, but "the instructions kept changing."
  - Carter told Gasinski this was confidential.
  - Carter did not give Gasinski a copy of either contract; however, she had a copy of the contracts from their personnel files.
  - Carter was "persistent" that the checks be direct deposited instead of printed, which was the common practice for "special" or "miscellaneous" payroll.
  - Ultimately, Gasinski processed the payouts based on Carter's verbal instructions and her own interpretation of the contracts.
- Within 24 hours, (May 8 or 9) the funds were direct deposited into their bank accounts, as requested, but "they weren't happy with the figure, they thought they deserved more."
- Approximately two (2) or three (3) days later, Carter wanted the payout amounts recalculated. Carter "did all the talking" on behalf of Reilly.
- According to the contracts, compensation was 180 days payout of salary. Carter wanted the time calculated by the dates, "so they get more money that way." Carter also felt that the sick leave payout was calculated incorrectly.
- Gasinski voided the checks for tax purposes. Carter and Reilly reimbursed the clerk's office finance department via personal check for the amount of the original deposit.
  - Carter: $56,100 + $2,300 (2 accounts) = $58,400
  - Reilly: $65,307
- Carter gave Gasinski new amounts and requested the second checks, which was when she became uncomfortable and reported the conflict to Gammichia.

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- Gasinski told Carter that she would not process the new checks until there was something in writing. Carter was angry and went directly to Gammichia.
- Carter was "upset" that Gasinski involved Gammichia, but Gasinski felt there needed to be paperwork to document the payouts.
- Gasinski and Gammichia worked on gathering paperwork and generating an employee change notice (ECN) for the payouts.

- Approximately two (2) weeks later, the figures were authorized and the ECN's were signed.
- Carter wanted 56 hours of vacation time left in his accrued amount and all sick time was to be paid out. Carter said Reilly did not want hers paid out.
- Gasinski processed the final checks around May 23, 2013, but they were back dated to May 10, 2013.
- After the payouts, neither Carter nor Reilly stopped working or took any sort of leave of absence and they continued to receive their biweekly salary.
- Gasinski did not know of anyone who remained employed with the clerk's office after being paid out for sick time.

Emailed Correspondence (RI-19)

SA Bressin obtained and reviewed the emails between clerk's office employees. In summary, the emails of particular interest reflect the following:

FDLE Note: The below listed employee titles were accurate when the fraud occurred, May 2013.

Lydia Gardner ~ Former Clerk of Court
Stephan Carter ~ General Counsel
Colleen Reilly ~ Interim Clerk of Court
Tracy Gasinski ~ Payroll Administrator
Joann Gammichia ~ Director of Talent Management
Cathi Balboa ~ Director of Administrative Services
Mike Murphy ~ Chief Financial Officer

February 4, 2013

11:30am – **FRS audit**
Murphy to Carter

> "As part of the teams review of the current year FRS audit findings, they looked at the audit report from 2006...in that report, the contributions to your (and Howard's) 457 plan were determined by the FRS auditors to be ineligible for FRS contributions...At that time, the FRS told us to take money from both of your accounts because you should not have had those included...That is why we were accounting for these contributions the way we were. I do not know anything about the conversations that Lydia had with the FRS

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people, but the change that we just made to your account to give you back those monies is contrary to a direct finding from the FRS in our 2006 audit. I want you to be made aware of this, because it is likely going to come up in a future audit again."

11:50am – FW:
Carter to Reilly

11:58am – FW:
Reilly to Gardner

12:07pm
Gardner to Reilly

"My understanding was that the deferred comp would go away and the $$ would be counted as regular income."

12:11pm – FW:
Reilly to Carter

12:18pm
Carter to Gardner (cc: Reilly)

"Thanks Lydia...as we spoke a few weeks ago we need to do new contracts. I think language in the new contract can remove any of the objections Mike and/or FRS might raise. Maybe you and I should talk to determine contract language that accurately reflects all intentions and that protects everybody. I am ready at your convenience."

2:48pm
Gardner to Carter

"Please bring me your draft. Thx."

2:50pm
Carter to Gardner

"Will do when I put it together."

February 5, 2013

9:14am – **Pop in when you get here**
Reilly to Carter

1:42pm
Carter to Reilly

"Signed. Whew"

2:01pm
Reilly to Carter

"Do I need one, as well?"

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2:08pm
Carter to Reilly

"Probably but let me look when I get back."

2:19pm
Carter to Reilly

"Have a copy of your contract? I bet Cathy Trinkle does or our office that keeps our personnel records."

February 6, 2013

11:00am – **FRS and deferred compensation**
Carter to Murphy (cc: Reilly and Gardner)

"The issues arising on this subject require legal interpretation of Florida Statutes and Administrative Rules. Those authorities and their interaction are subject to significant nuance from a legal standpoint, requiring a trained eye. Communication to or from FRS on this issue should be handled by me, until further notice."

11:55am
Reilly to Carter

"Fill me in when you get a chance."

February 8, 2013

11:43am – **When do you want to see me?**
Carter to Gasinski

11:43am
Gasinski to Carter

"For real??? What for?"

11:47am
Carter to Gasinski

"423.08 is still showing up as clerk paid def comp when it should be employee paid."

1:40pm
Gasinski to Carter

"Not sure I'm understanding...it is employer paid as stated in your contract. Why would you think it's different all of a sudden? Let me know your thoughts..."

May 1, 2013

8:12pm – no subject
Carter to Reilly

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"Two different approaches call to discuss if you want."

Attachment 1:

To whom it may concern:

The employment contracts for the Chief Administrative Officer, Colleen Reilly, and General Counsel, Stephan W. Carter, are hereby terminated, and they are hereafter at-will employees of the clerk's office, to be compensated at their current compensation levels. Additionally, they are to be paid the compensation due under the termination provision of their contracts, although, each of them may, at his or her discretion, defer the payment for leave time until another time of their choosing. Three percent shall be withheld for contribution into FRS, in accordance with current law.

Lydia Gardner
Clerk of Circuit and County Courts
Orange County, Florida

Attachment 2:

To whom it may concern:

The employment contracts for the Chief Administrative Officer, Colleen Reilly, and General Counsel, Stephan W. Carter, are hereby terminated, and they are hereafter at-will employees of the clerk's office, to be compensated at their current compensation levels. Additionally, they are to be paid the compensation due under the termination provision of their contracts, although, each of them may, at his or her discretion, defer the payment for leave time until another time of their choosing.

Lydia Gardner
Clerk of Circuit and County Courts
Orange County, Florida

May 2, 2013

6:24am
Reilly to Carter

"I may just ask her to sign both until we have an opportunity to sort this out."

6:37am
Carter to Reilly

"That is good if she will do it. When I think about it, I bet Lydia might have the same reaction as she did with the question about deferred comp. That it would be considered compensation for FRS purposes.

The purpose of the clause was to make us to hold [sic] in the event we were terminated. That is, what we would have received over the following six months had we still been under the contract. If it is not considered compensation for which FRS contribution is made, that purpose is not achieved."

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May 13, 2013 (Monday)

4:26pm – **Document 1**
Steve Carter to Carter

> "The object of the termination provision of the contract was that Colleen would not accept the position if she would not have at least 6 months of protection in the event her working relationship with Lydia Gardner ended. In other words, both Colleen and Lydia understood that if the possibility existed that Colleen would move from Indiana to take the job only to have Lydia leave the office quickly, the deal would have not been struck. With Lydia's death, that working relationship has ended, and it is consistent with the intention of the parties that the 6 months of protection be implemented. Colleen may continue to work with a new clerk, but it will be on an at-will status, at her own risk of forgoing other employment with no protection against her removal.
>
> Colleen Reilly has been appointed Clerk Ad Interim. Under section 27.09, Florida Statutes, the Clerk Ad Interim "shall assume all the responsibilities [and] perform all the duties...as if he or she had been duly appointed to fill the office...That includes the power to terminate the contract for general counsel."

May 16, 2013 (Thursday)

12:25pm – **Payroll**
Carter to Gasinski

> "I need a few minutes with you this afternoon. After 2:30. What is good?"

May 20, 2013 (Monday)

11:48am
Gasinski to Carter

> "Hi Steve. I just got in the office."

11:49am
Carter to Gasinski

> "I can come by shortly if that works."

11:50am
Gasinski to Carter

> "That's fine."

2:32pm – **Final Pay Out**
Gasinski to Carter

> "Okay...you have 405.57 vacation hours x 68.60 = **$27,822.10**
> 327.96 sick hours x 17.15 = **$5,624.51**
>
> $142,688.00 Annual Salary

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$11,000.00 Compensation Pay
$153,688.00 / 2 = **$76,844.00**
$27,822.10
$5,624.51
$76,844.00
$110,290.61 Total Pay Out

3:20pm
Gasinski to Carter

Colleen Reilly:

130.64 vacation hours x 72.88 = **$9,521.04**
94.65 sick hours x 18.22 = **$1,724.52**

$151,590.40 Annual Salary
$15,000.00 Compensation Pay
$166,590.40 / 2 = **$83,295.20**

$9,521.04
$1,724.52
$83,295.20
$94,540.76 Total Pay Out

May 21, 2013 (Tuesday)

9:16am – **When can I see you**
Carter to Gasinski

10:00am
Gasinski to Carter

"Is there any particular date you want me to use for this payroll?"

11:00am – **Final Payout**
Gasinski to Carter (cc: Gammichia and Murphy)

"Per my conversation with Joann this morning, I'm unable to process the final payment until I get proper documentation from ODTM. Joann stated that she is working on it."

I'll let you know when I can move forward."

11:21am – FW:
Carter to Reilly

"Is this something Joann should be involved in?"

11:32am
Carter to Gasinski and Gammichia

"Working on what? What is there to work on?"

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11:51am
Gasinski to Carter and Gammichia

> "I need documentation from ODTM to finalize the payments. That's what Joann is working on."

12:09pm – **FW: Final Pay Out**
Gasinski to Carter

> "I calculated the sick time incorrectly. All final pay out on sick time is only 25% for the hourly rate. I made the correction in red below."
>
> "I realize that Colleen will not be paying out her vacation or sick time per our conversation."

12:22pm
Carter to Gasinski

> "I am trying to leave but Colleen wants this taken care of before I can go. I just need to know if you have everything you need. If yes, I can go."

May 22, 2013 (Wednesday)

9:49am – **Tracy**
Gammichia to Balboa

> "Just so you know, I asked Steve not to go back to Tracy again as she had no authority to write a check to him. Yet after he left here he called Tracy and asked her to call him on his cell phone. Since she was at the doctors, she did not call. He left another message that he would talk to her today."

May 23, 2013 (Thursday)

9:41am – **refund**
Carter to Gasinski

> "I understand I am to write you a check for the amount paid yesterday. I will leave one for you for $58,400. If this is not the right amount, let me know. This time please send all the money to BOA and none to the secondary depository. Thank you."

9:44am
Gasinski to Carter

> "Okay...that is the correct amount and I'll make the adjustment on your bank account. Just to verify: You still want 7 days (56 hours) of your vacation hours left in your accrual leave, correct?"

9:54am – **Payroll Adjustment**
Gasinski to Reilly

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"Before I proceed with the payroll adjustment, can you please confirm that the attached adjustments are correct?"

"I'm sorry for all the confusion. I was given the incorrect information which caused the wrong figures within the payroll."

10:15am – FW:
Reilly to Carter

"FYI."

10:16am
Reilly to Gasinski

"That looks right. Thank you."

May 24, 2013 (Friday)

9:09am – **Misc Payroll**
Gasinski to Reilly

"One more question…Is there a specific date you wanted me to date the checks for? I'm assuming May 9th but just wanted to confirm."

9:34am
Reilly to Gasinski

"That doesn't matter, Tracy."

9:37am
Gasinski to Reilly

"Okay. I tried entering 5-9-13 but it wouldn't take it because I used it for the first one. I'll use 5-10-13."

10:33am – **Disregard Voice Message**
Gasinski to Gammichia

"You can disregard the voice message I left you. I'm assuming all is well otherwise I would have heard from you this morning. I started processing their payroll this morning."

10:59am
Gammichia to Gasinski

"Can you give me 30 minutes? Or is it too late."

11:01am
Gasinski to Gammichia

"OMG…I was just about ready to send the file. We're still safe then. I'll wait to hear from you."

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11:05am
Gammichia to Gasinski

"I am with Cathi B right now, call you soon."

11:06am
Gasinski to Gammichia

"Okay...thanks."

11:15am
Gammichia to Gasinski

"Does Mike know about the deferred comp being paid to Colleen in salary?"

11:29am
Gasinski to Gammichia

"Yes."

May 28, 2013 (Tuesday)

11:59am – **ECNs**
Reilly to Gammichia (cc: Gasinski)

"Could you please generate new ECN's for Steve Carter and me? Steve's should incorporate his deferred comp of $11,000 annually into his regular rate of pay. Mine should state that I am on a leave of absence while I serve as Clerk ad Interim."

May 30, 3013 (Thursday)

11:19am – **ECN**
Reilly to Gasinski

"I signed an ECN this week that will change Steve Carter's hourly rate, incorporating what had been deferred comp into his regular pay. That may require a correction on his last paycheck, as well. I apologize for the paperwork was delayed."

11:20am
Gasinski to Reilly

"Okay...great! Thanks Colleen. Steve will get a retro pay in the next payroll with the difference."

11:20am – FW:
Reilly to Carter

"What more may I do for you....."

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June 13, 2013 (Thursday)

12:44pm – **ECN**
Gasinski to Carter

> "I questioned that when I was processing payroll and ODTM told me the ECN is effective 5/20/13 which is 40 hours, not 80." (ECN attached)

March 28, 2014

8:05am
Dan Gerber to Clerk Eddie Fernandez

> "It is our opinion that there are sufficient facts known to us from the paperwork previously provided and the verbal report provided by Mr. Gonzalez to constitute grounds to place the two subjects of our investigation on administrative leave beginning today."

Attempted Contact

On July 17, 2014, SA Bressin and SA Daniel Wallace attempted to make contact with Carter and Reilly in reference to conducting an interview. Results were negative and business cards were left at their last known addresses.

Carter

Later the same date, Attorney Richard S. Rhodes called SA Bressin on behalf of Carter. Rhodes requested additional time to confer with Carter and determine if an interview was feasible.

On August 7, 2014, Rhodes advised he was going to review the records the following day and would call to set up an appointment next week after he discussed the findings with Carter.

On August 13, 2014, SA Bressin contacted Rhodes and informed him that an interview would need to be set by the end of the week. Rhodes hesitated to commit or agree to Carter being interviewed.

SA Bressin afforded Carter the opportunity to prepare a sworn statement to be included with the investigation. SA Bressin said the statement needed to be sworn and completed by the end of the week.

At the time of this investigative summary, SA Bressin has not heard back from Carter or his attorney.

Reilly

On July 18, 2014, SA Bressin left a voicemail for Reilly at the telephone number listed in her personnel file.

Later the same day, Attorney Amy Tingley called SA Bressin on behalf of Reilly. Tingley requested additional time to confer with Reilly and determine if an interview was feasible.

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On July 18, 2014, SA Bressin contacted Tingley and she advised that her trial schedule prevented immediate scheduling of an interview with Reilly.

On August 14, 2014, Tingley advised she was concerned that Reilly would not be able to shed any more light onto the investigation being that she acted under the direction of the clerk's office counsel. SA Bressin afforded Reilly the same opportunity to provide a sworn written statement to be included with the investigation. SA Bressin said there needed to be a decision one way or another by the end of the week.

On August 22, 2014, SA Bressin received a signed statement from Reilly via email from Tingley's legal assistant. In summary, the statement reflects the following:

> "As Lydia had done with her previous CAO, she offered to tie my employment to her role as the Clerk, with a financial payment if she left the office for any reason. That would offer me some financial security and provide an incentive to me to stay in the position until she left office. She also insisted that I provide 90-day written notice if I were to accept another position, a notice requirement I considered onerous. I argued against the requirement, unsuccessfully.
>
> At the time of her death, I believed the contract to be terminated. This was consistent with my understanding of Lydia's intent, and the advice of Lydia's staff legal counsel, Stephan Carter. Lydia placed complete trust in Mr. Carter, a former judge, and sought his counsel on all contract issues. She often instructed staff, in meetings, that Mr. Carter's word would always be her final position and the position of the office. I had no reason not to place the same trust in his legal advice, particularly at such a difficult time."
>
> In May 2013, I tragically lost my boss and friend. Upon her death, the contract with Lydia ended. I was appointed to the Interim Clerk of Court role. I understood I would, in all likelihood, be leaving the office as soon as the Governor made an appointment.
>
> In the new role as Interim Clerk, I was without deferred compensation, benefits and salary attached to my contract as CAO with Lydia Gardner."

Affidavit – Judge Belvin Perry

SA Bressin obtained and reviewed a sworn statement from Belvin Perry, former Chief Judge of the 9th Judicial Circuit of Florida, in reference to his appointment of Reilly as Clerk Ad Interim for Orange County. In summary, the affidavit signed November 21, 2014, reflects the following:

- During discussions with Belvin Perry, Reilly never revealed she had a severance package with the Clerk of Court, nor did she say anything about terminating her current employment, prior to accepting the appointment as Clerk Ad Interim.
- Reilly never mentioned that she intended to separate from the Office of the Clerk to collect a severance package. "If that had been communicated to me, her appointment would have never taken place.
- "To my knowledge she never resigned nor terminated her employment with the office."

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Final Timeline and Summary of Events

SA Bressin obtained and reviewed a multitude of records from the clerk's office, including duplicate copies. In summary, the sequential events considered pertinent to the investigation include the following:

Date	Activity	Source of Information
6/9/2003	Carter appointed General Counsel by Clerk Lydia Gardner	Personnel File (ECN)
1/3/2005	Employment Agreement: Carter (Effective date)	Personnel File (Contract and ECN)
1/7/2009	Amendment: Carter Term: extended indefinitely	Personnel File (Correspondence and ECN)
12/7/2009	Reilly appointed Chief Administrative Officer by Clerk Lydia Gardner	Personnel File
	Employment Agreement (1): Reilly (Effective date)	Personnel File (Contract and ECN)
6/7/2010	Employment Agreement (2): Reilly Term: as long as Gardner is Clerk	Personnel File (Contract and ECN)
2/5/2013	Amendment: Carter Re: Clarification of terms in contract	Personnel File (Correspondence)
	"Signed, phew."	Email: Carter to Reilly
5/1/2013	"Two approaches"	Email: Carter to Reilly
	"Contracts hereby terminated"	Attachments
5/2/2013	"I may just ask her to sign both."	Email: Reilly to Carter
	"The purpose of the clause was to make us to hold [sic] in the event we were terminated."	Email: Carter to Reilly
5/8/2013	Lydia Gardner passed away	
	"CAO on leave of absence."	Personnel File: Reilly (ECN)
5/9/2013	Order Appointing Acting Clerk of Court	Personnel File: Reilly
	Direct Deposit Advice Carter: $58,400 (net) Reilly: $65,307 (net)	Finance Records

5/10/2013	Direct Deposit Advice Carter: $156,443 (gross) Reilly: $115,329 (gross)	Finance Records
5/13/2013	"Document 1"	Email: Carter to Carter
	"Termination provision"	Attachments
	"Rate of pay now including deferred comp."	Personnel File: Carter (ECN)
5/16/2013	"Need a few minutes with you this afternoon."	Email: Carter to Gasinski
5/20/2103	"I just got to the office."	Email: Gasinski to Carter
	"I can come by shortly."	Email: Carter to Gasinski
	"Final Pay Out" Carter: $110,290 (gross) Reilly: $94,540 (gross)	Email: Gasinski to Carter
5/21/2013	"When can I see you?"	Email: Carter to Gasinski
	"Per my conversation with Joann this morning, I'm unable to process the final payment until I get proper documentation from ODTM."	Email: Gasinski to Carter
	"Working on what? What is there to work on?"	Email: Carter to Gasinski
	"I need documentation from ODTM to finalize the payments."	Email: Gasinski to Carter
	"I calculated sick time incorrectly"	Email: Gasinski to Carter
	"I am trying to leave but Colleen wants this taken care of before I leave."	Email: Carter to Gasinski
	Gammichia initial involvement	Typed statement: Gammichia
	Balboa initial involvement	Handwritten Notes: Balboa
	Telephone call to Reilly	
5/22/2013	Meeting between Reilly, Carter, Balboa, and Murphy	Handwritten notes: Balboa
5/23/2013	"Refund" ($58,400)	Email: Carter to Gasinski

	"7 days (56 hours) of vacation left in your accrual?"	Email: Gasinski to Carter
	Payroll printouts re: checks dated 5/9/13 (Printed by Gasinski)	Finance Records
	"Payroll Adjustment"	Email: Gasinski to Reilly
	Reilly: $115,329.60 (gross) Carter: $156,443.11 (gross)	Attachment
	"Tracy was told this morning not to share this new change."	Handwritten comments: Gammichia to Balboa
5/24/2013	"Is there a specific date."	Email: Gasinski to Reilly
	"Tried 5/9/2013 but it wouldn't take it because I used for the first one. I'll use 5/10/2013."	Email: Gasinski to Reilly
	Payroll printouts re: checks dated 5/10/13 (Printed by Gasinski)	Finance Records
5/28/2013	"Generate ECN's"	Email: Reilly to Gammichia
	Signed ECN's (date stamped)	Personnel Files
5/30/2013	"I signed an ECN that will change Carter's hourly rate..."	Email: Reilly to Gasinski
	"What more may I do for you..."	Email: Reilly to Carter
12/9/2013	Merit Increase	Personnel File: Carter
1/27/2014	End of acting pay / Merit Increase	Personnel File: Reilly
3/28/2014	Administrative Leave	Personnel Files (ECN's)
4/1/2014	Resignations	Personnel Files (ECN's)

Summary Analysis

Probable cause exists to charge Stephen Carter and Colleen Reilly with Grand Theft, a felony of the first degree, in violation of Florida Statute 812.014(2)(a)1. Specifically, the clerk's office was deprived a total of $271,772.71 for "severance" to Carter and Reilly when they were in fact ineligible for the payouts.

Loss attributed to Carter: $156,443.11
Loss attributed to Reilly: $115,329.60

Carter and Reilly orchestrated these payments to themselves. As Interim Clerk of Court, Reilly held the highest ranking position at the clerk's office and Carter, as General Counsel, was the only in-house attorney. Carter and Reilly abused their positions of trust by directing subordinate employees to process the severance payouts without the proper documentation or legitimate justification.

Carter and Reilly claimed the payouts were authorized pursuant to the conditions of their employment agreements with Clerk Gardner. However, the agreements expired upon the death of Clerk Gardner. Therefore, any entitlement to severance also expired.

Even if the agreements did not expire upon death, the provisions did not allow for the payment of severance unless employment with the clerk's office was actually "terminated." Specifically, according to the amended agreements:

- Carter: "Termination by the Clerk includes the ending of the employment relationship for any reason other than voluntary resignation."

- Reilly: "Employment shall be considered terminated by the Clerk when employment with the clerk's office ends..."

Carter and Reilly did not terminate their employment before or after they received the payouts. In addition to the salary Carter and Reilly received as part of the severance, they both continued working full-time and collecting a regular paycheck.

SA Bressin interviewed the following clerk's office employees:

- Mike Murphy, Certified Public Accountant
- Tracy Gasinski, Payroll Administrator
- Joann Gammichia, Director of Talent Management
- Cathi Balboa, Director of Administrative Services

The interviewed employees all concluded that Carter and Reilly were not eligible to receive a severance if they continued working at, and collecting a salary from, the clerk's office. Furthermore, Investigator Thomas Gonzalez (private attorney) independently reviewed the employment agreements and determined that there appeared to be no contractual basis for the severance payouts while they remained employed. FDLE Legal Advisor David Margolis reviewed the agreements and arrived at the same conclusion.

Carter and Reilly arranged for these payments despite their apparent knowledge that the severance was not justified. Specifically, the following behaviors demonstrate knowledge of wrongdoing:

- On May 1, 2013, Carter emailed Reilly two (2) versions of possible amendments to their existing employment agreements. The amendments, if signed by Gardner, authorized the severance payouts and allowed Carter and Reilly to continue working at the clerk's office as "at-will" employees. This suggests that Carter recognized the existing agreements did not authorize compensation or severance for voluntary resignations or if they continued their employment. (Ultimately, the amendments were never signed or approved.)

- On or about May 8, 2013, Carter approached Gasinski and initiated the payout process. He said this was "confidential" when ordinarily financial records were public record.

- After the initial payouts, Carter wanted the amounts recalculated, which was when Gammichia, Balboa, and Murphy became involved.

- According to Gammichia, Carter and Reilly did not originate any documentation to authorize the payouts. They acted like the transaction was "undercover" and they said the payouts had "nothing to do with [their] employment." It was a "separate personal issue."

- On May 21, 2013, Gasinski emailed Carter and that she was unable to process the final payments until she received documentation from Gammichia. Carter quickly forwarded the email to Reilly and asked, "Is this something Joann should be involved in?"

- Carter extensively pressured Gasinski to process the payouts and he became upset when he learned that Gammichia was involved. As standard operating procedure, Gammichia handled human resource matters such as compensation, and she often worked "hand in hand" with payroll.

- On May 21, 2013, Carter confronted Gammichia and demanded she "get out of his personal business." The same day, during a telephone conversation, Reilly told Gammichia that she had "no business in this" and she needed to "butt out." Balboa suggested they contact Labor Attorney Wayne Helsby (or other outside counsel), but Reilly said that she had authorized the payout and to "stay out of it."

- As the clerk's office supervisors became increasingly uncomfortable, Carter and Reilly escalated their efforts to silence any critics.

- In a meeting on May 22, 2013, Reilly confronted Murphy and Balboa about their loyalty to the clerk's office, which Balboa felt was an intimidation tactic. Reilly told Balboa and Murphy that "this is a private matter, neither of you should be involved in it...this is our personal business." Also during the meeting, according to Murphy, Carter said, "I'm the attorney and I reviewed the contract and we're not gonna contact an outside attorney," despite the fact this was standard operating procedure.

- According to Balboa, Helsby reviewed all the severance agreements because Carter said he had no expertise in employment law.

- Reilly specifically declined any payout for vacation time. Her refusal to accept a payout for vacation proves that Reilly did not consider her employment to be "terminated."

- On May 30, 2013, after the final payments were made, Reilly emailed Carter, "What more may I do for you..." This illustrates collusion and supports the witness statements that Carter was not satisfied with the initial payout amounts.

- Carter and Reilly eventually reimbursed the clerk's office for the payouts, after their actions came to light. However, this does not negate the theft, as the statute creates a crime for the temporary deprivation of property.

Notarizations

I swear the foregoing is true and correct

Special Agent Julie Bressin
Florida Department of Law Enforcement
500 West Robinson Street
Orlando, FL 32801

SWORN to and SUBSCRIBED
This 9th day of December, 2014

(Notary Public or LEO)

EMMA RODRIG
MY COMMISSION
October 6, 201
#FF 160405
Bonded thru
Troy Fain - Insurance
NOTARY PUBLIC, STATE