

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT  
IN AND FOR ESCAMBIA COUNTY, FLORIDA**

**ESCAMBIA COUNTY,**

Plaintiff,

v.

**PAM CHILDERS,** Clerk of the Circuit  
Court and Comptroller for Escambia  
County,

Defendant.

Case No.

**COMPLAINT FOR WRIT OF MANDAMUS,  
INCLUDING SUPPORTING MEMORANDUM OF LAW**

Plaintiff Escambia County (“County”), by and through the Escambia County Board of Commissioners, seeks the issuance of a writ of mandamus to Defendant Pam Childers, in her capacity as the Clerk of the Circuit Court and Comptroller (“Clerk” or “Defendant”).

The County’s memorandum of law—per R. 1.630(b)(3)—begins on page 19 of this complaint.

**INTRODUCTION AND JURISDICTION**

1. This is an action for issuance of a writ of mandamus to the Clerk, ordering her to resume her ministerial duties and to comply with County ordinances and State law. Specifically, the County seeks to have the Clerk resume

her longstanding practice of making payments of County money to the retirement plan the County established. The Clerk is required to do this by a County ordinance, a binding contract entered into in 1997 between the County and the ICMA Retirement Corporation (or just “ICMA”), and the Florida statute requiring the Clerk to act as the Board of Commissioners’ clerk and accountant.

2. The Clerk’s sole function with respect to the County’s retirement plan is to issue checks on behalf of the County to the County’s designated investment company.

3. Despite honoring her obligations for years, in the summer of 2021 the Clerk made the unilateral decision to cut payments to an arbitrary reduced rate, and then in 2022 decided to discontinue them entirely. Nothing has changed about the longstanding investment contract or the law to explain the Clerk’s unilateral decisions. But in the same summer 2021 timeframe, the Clerk aired in writing that she has personal and political disagreements with three members of the Board of Commissioners. As it so happens, three members of the Board are affected by the Clerk’s unilateral decision, including two of those the Clerk has the disagreement with.

4. Other than the three Commissioners, no other County employee has had their retirement contributions cut by the Clerk.

5. The Clerk has no discretionary authority to refuse to honor the County's contract with ICMA. On the contrary, the Clerk's duty to honor the contract is purely ministerial.

6. The Clerk has failed to uphold the duties of her office. Mandamus is the appropriate relief and a writ should be issued as soon as possible.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction under Article V, Section 5(b) of the Constitution of the State of Florida and under Fla. R. Civ. P. 1.630.

8. This is the proper venue. The grounds for this complaint arose in Escambia County, all parties are domiciled in Escambia County, and the County/ICMA contract is to be performed in Escambia County.

### **PARTIES**

9. Escambia County is governed by the Escambia County Board of Commissioners (the "Board") and is a political subdivision of the state of Florida and has all powers accorded to it pursuant to Chapter 125, Fla. Stat. and its home-rule authority.

10. The Clerk is the Clerk of the Circuit Court and Comptroller for Escambia County, an elected County official under Article V, Section 16 and Article VIII, Section 1(d) of the Florida Constitution and Chapter 28, Fla. Stat.

## **FACTUAL ALLEGATIONS**

### **The County's Local Retirement Plan**

11. In Section 121.182, Fla. Stat., the Legislature authorized counties to create local supplemental retirement programs.

12. In Section 121.182, Fla. Stat., the Legislature also authorized counties to invest funds, purchase annuities, or provide local supplemental retirement programs.

13. Section 121.182's sole requirement is that any local supplemental retirement program established thereunder must comply with Art. X, Section 14 of the Florida Constitution, which requires that the program be actuarially sound.

14. Escambia County created such a supplemental retirement program on January 7, 1997, by passing Resolution (R97-1) "Relating to a Money Purchase plan authorizing the establishment of a money purchase plan." Ex. 1.

15. R97-1 was codified at Section 2-151, Escambia County Code of Ordinances. Ex. 2.

16. R97-1 was duly adopted by the Board and all formalities necessary to enact that resolution were observed.

17. Finally, in connection with R97-1, the County entered into a contract with ICMA Retirement Corporation for the establishment of a supplemental local retirement program. Ex. 1, at p. 4.

18. The January 7, 1997 contract with ICMA was signed by the then-County Administrator and Clerk of Circuit Court.

19. The 1997 County/ICMA contract was duly executed and all formalities necessary to form a contract were performed.

20. In this complaint, the County will refer to these 1997 activities as having created the County's "Local Plan," and the contract—including successive, non-material amendments and extensions—as the "County/ICMA" contract.

21. The Local Plan is sometimes also referred to as a "401(a) program," meaning that it meets criteria established in 26 U.S.C. § 401(a), the Internal Revenue Code.

22. The County/ICMA contract created the Escambia County Money Purchase Plan Trust, which allowed management employees and Senior Management Service Employees of Escambia County Constitutional Office to participate in the Plan.

23. The Florida Retirement System (“FRS”) is a state-level agency that sets contribution amounts for local governments in Florida. The Local Plan is not part of the FRS, but it is parallel to it.

24. Employees can join the Local Plan or a plan operated by the FRS, but not both, and their election to be in one system or the other is irrevocable.

25. Upon being hired, employees choose the Local Plan or an FRS plan on a form that is given to them by the Clerk herself.

26. Under the County/ICMA contract, the County is bound to make employer contributions at a rate equal to the rate of contribution that would be required if participants were engaged in the Florida Retirement System.

27. As defined in this complaint, the “FRS Rate” means the rate that the County would have to pay to the Florida Retirement System if an employee were enrolled there, rather than the Local Plan.

28. The County/ICMA contract was amended on December 29, 1997. In relevant part, it stated that the plan was available for “Senior Management Service Employees of Escambia County Constitutional Officers and All Elected Escambia County Officials.” Ex. 3. The contribution rate remained the same—to match the FRS Rate.

29. At all times, the County/ICMA contract has required the County to make employer contributions to the Trust it created, at the FRS Rate.

30. The cost to taxpayers is the same, whether a participant is enrolled with the FRS or in the Local Plan.

**The Role of the Parties Regarding the County/ICMA Contract, and Escambia County's Authority to Create the Local Plan**

31. Escambia County is a non-charter county. In Florida, non-charter counties are broadly empowered with home-rule authority.

32. Unless the legislature has pre-empted a particular subject relating to county government by either general or special law, a non-charter county has full authority to act through the exercise of home rule power.

33. Escambia County has full authority to create and implement the Local Plan.

34. The County/ICMA contract is the type of contract contemplated by Section 121.182.

35. The County Commissioners had the legal authority to enter into the ICMA contract.

36. The County Commissioners, acting as a Board, are the only party to properly exercise the contract authority of Escambia County.

37. The Clerk does not have the legal authority to bind Escambia County to a contract like the County/ICMA contract.

38. The Clerk is not a person or official with the authority to exercise the contract authority of Escambia County.

39. The Clerk's duty is to disburse Escambia County funds at the direction of the Board.

40. The Clerk lacks the authority to refuse to disburse funds that are lawfully apportioned and approved.

41. The Escambia County Local Plan is no anomaly. Many other counties and cities in Florida have also implemented similar programs.

42. Numerous other Florida counties and municipalities also offer local plans to elected officials, including county commissioners.

43. To counsel's knowledge, no such program has ever been challenged as illegal or been disapproved of by any court in Florida.

**From 1997 to June 2021: No Objections by This Clerk or Any Former Clerk**

44. From 1997 to the beginning of June 2021, Escambia County's Local Plan was operated without any current or former Clerk objecting to its legality.

45. During that time, the person holding the office of Clerk always calculated contributions to the Local Plan for participating Commissioners at the FRS Rate.

46. From 1997 until June 2021, the Clerk and each of her predecessors made all necessary payments under the County/ICMA contract at the FRS Rate.

47. The present Clerk herself, from her investiture in office in August 2012 until June 2021, processed all necessary payments under the ICMA contract at the FRS Rate.

48. Given that there are usually 26 paydays in a year, then just during the eight years 2013 through 2020 (before this dispute arose), the present Clerk made 200 or more payments to ICMA at the FRS Rate without raising any issue.

49. Each of the payments the Clerk made during the years 2013 through 2020—*i.e.*, at the FRS Rate required by the County/ICMA contract—was a legal and lawful payment.

50. The Clerk never made an illegal payment to ICMA on behalf of the County between the years 2013 and 2020.

51. The clerk never made a legally unauthorized payment to ICMA on behalf of the County between the years 2013 and 2020.

**2016: Escambia County Reconfirms its Relationship with ICMA;  
the Clerk Honors the Amended Contract**

52. On or about March 3, 2016, Thomas Turner, Director of Human Resources for the Escambia County Board of County Commissioners, recommended that the Board renew its contract with ICMA, with amendments that are not relevant here. Ex. 4.

53. Mr. Turner's recommendation noted that the "contributions to this plan for employees that elected the 401A plan is equal to the Florida Retirement System contribution rate for the employees' retirement class, which is determined by FRS each July." *Id.* In other words, he noted that the County would continue to make retirement payments at the FRS Rate.

54. Mr. Turner's recommendation also stated that the County Attorney's Office had reviewed the policy and deemed it legally sufficient. *Id.*

55. On March 3, 2016, the Board voted to amend the County/ICMA contract, keeping it in substantially the same form as the original 1997 version.

Ex. 5.

**Summer 2021: The Dispute Arises;  
The Clerk's First Position: Payments Should be Reduced**

56. As discussed above, from 1997 until June 2021, all former Clerks and the current Clerk observed the County/ICMA contract and sent payments to ICMA using the FRS Rate.

57. Around June 2021, the Clerk announced that she had perceived a dispute between herself and certain members of the Board of Commissioners. Shortly thereafter, the Clerk changed the longtime policy of her office and began shortchanging the County's payments to ICMA. Some relevant events are recounted immediately below.

58. On June 6, 2021, the Clerk wrote an email to the County Attorney and the former County Administrator. Ex. 6.

59. The email states in relevant part:

Immediately following Thursday night's Board of County Commission meeting (6/3/2021), three Commissioners were walking the back hallway together talking loudly about me saying, in order Barry, May and Bergosh:

*[The words of the Clerk, which the County denies are accurate, are hearsay and they are inflammatory. They are omitted from this pleading.]*

The commissioners were referring to the ICMA/401(a) issue and my reluctance in back-funding their personal retirements. I wish to state, I find this diatribe not only offensive to me personally but inappropriate behavior by

an elected official. This is indicative of the type of behavior that county employees have complained about over the last several years. I will not put up with this kind of harassment or abuse towards me, my staff or any county employee.

60. The Clerk wrote herself a memo in which she wrote, “I started my research on elected official’s participation in [the Local Plan] on or around June 2021.”

61. According to her own memo, the Clerk made her first call to the Florida Retirement System on June 8, 2021—two days after she sent the June 6 e-mail complaining about the alleged “abuse” from certain Commissioners.

62. On June 17, 2021, the Board terminated the County Administrator.

63. On June 17, 2021, the Clerk submitted a report to the Board of County Commissioners with the recommendation that, effective July 1, 2021, the contribution rate for the Local Plan would be cut from the FRS Rate to 8.34%, a number apparently taken from a component of Employer Contribution Rates before Blending for the FRS Investment Plan Rates.

64. Ex. 7 is the Clerk’s report, with its attachments.

65. On or about July 9, 2021, the Clerk reduced the payments for Commissioners participating in the Local Plan from the FRS Rate, a 51.42% contribution, down to a contribution of 8.34%.

66. The Clerk admitted in her June 17 Report that the 401(a) plan “is available for Escambia County employees in the Senior Management Services Class (‘SMSC’) and the Elected Officers’ Class.”

67. The “Elected Officers” class includes the county commissioners who opt to participate in the plan.

68. The Clerk also admitted in her Report that the present County/ICMA contract “sets the rate at the ‘\*\*Rate of Contribution per Florida Retirement System”—meaning, the County continues to use the FRS Rate.

69. The FRS rates are set by law following actuarial studies, and the Local Plan utilizes the FRS-set contribution rates. Ex. 8 shows the FRS Rates as of July 2021.

70. Also on June 17, 2021, at a regular meeting of the County, the Clerk verbally stated that she would not reduce the employer contribution rates for SMS employees, but would continue to use the FRS Rate, which includes a contribution to defray the Unfunded Actuarial Liability (UAL) imposed by the FRS under both the pension and investment plans. But for County Commissioners, she would cut the rate to 8.34%.

71. The Clerk has continued making Local Plan payments at the full FRS Rate for all participants—except County Commissioners.

72. For example, the Clerk has continued to pay contribution rates set by the FRS Rate of 29.01% for Senior Management Service employees.

73. Only three Commissioners are affected by the Clerk's decision because only three of them participate in the Local Plan. They are Commissioners Barry, May, and Bender. Two of these—Barry and May—are the same Commissioners the Clerk complained about in her June 6 e-mail.

74. The affected Commissioners' decision to participate in the Local Plan means they cannot participate in the Florida Retirement System. Now that the Clerk has failed to fulfill the Local Plan, these Commissioners have no alternate system available to them.

75. Beginning with the pay period beginning July 9, 2021, the Clerk proceeded to reduce employer contributions for Commissioners to the rate of 8.34%. This is not the FRS Rate required by the County/ICMA contract.

76. In response to the Clerk's threats and actions, the County Attorney hired the law firm of Allen, Norton, and Blue to investigate. Its independent legal opinion confirmed the legality and lawful nature of the Local Plan—including the FRS Rate. Ex. 9, at p. 3 ("Overall, it is my opinion that the County's use of the Local 401(a) Annuity Program complies with the law.").

77. The Clerk ignored this independent legal opinion.

78. The Clerk has no independent legal opinion regarding the Local Plan. She has merely argued through opinions from her own office and agents that the Local Plan is not lawful as applied to the Commissioners.

79. From July 9, 2021 through December 2021, the Clerk made payments to ICMA at her unilaterally-reduced 8.34% rate, confirming her belief that the County/ICMA contract is lawful, even if not at the full FRS Rate.

**December 2021:  
The Clerk's Current Position: No Payments Can Be Made**

80. However, on December 3, 2021, the Clerk changed her legal position again.

81. The Clerk sent a letter to the Board saying that, as of 2022, she would cease to process *any* contribution to the 401(a) plan for Commissioners. Ex. 10.

82. The Clerk made good on that threat as well. On January 7, 2022, which was the first payday of 2022, the Clerk failed to make any contribution to the Local Plan for Commissioners.

83. The Clerk has made very clear going forward that she will not honor the County/ICMA contract at all when it comes to the Commissioners.

84. There is no legal basis for the Clerk to disregard the directive of the Board, or to unilaterally refuse to make payments under the County/ICMA contract.

85. Nor is there any principled basis for the Clerk to have made partial payments during the second half of 2021, if her current position in 2022 is that the Local Plan is completely invalid.

**The Clerk is Acting Without Authority and  
is Refusing to Carry Out Ministerial Acts**

86. The Clerk’s duty to implement the County/ICMA contract by making payments is ministerial.

87. From July to December 2021—when she made reduced payments to ICMA—and from January 2022 forward—when she is now making *no* payments to ICMA—the Clerk has failed to uphold her ministerial duty.

88. It is not within the Clerk’s scope of authority to interpret the County/ICMA contract.

89. The Clerk has no “vote” or “say” on the contract under any law.

90. The Clerk is improperly interfering with the Board’s authority and right to enter into contracts for the County.

91. Indeed, the Clerk’s unilateral, *ultra vires* actions are potentially causing the County itself to be in breach of contract with other entities.

92. For example, the Clerk’s actions are causing the County to violate its contract with ICMA.

93. The Clerk's actions are also causing the County to violate its promise to those Commissioners who selected the Local Plan—on the Clerk's own form.

94. Because of her unilateral and unlawful actions, the Clerk has unnecessarily and unreasonably opened up the County to potential liabilities.

95. The Clerk's mandatory duty is to make the payments required by the contract.

### **RELIEF SOUGHT**

The County asks that the Court render the following relief in its favor and against the Clerk:

1. Declare that the County/ICMA contract, as amended over the years, is lawful and currently in force.

2. Declare that the Clerk's compliance with the Board's directives concerning employer contributions for its Local Plan is a ministerial duty of the Clerk, not an act in which the Clerk has any discretion.

3. Declare that the Clerk has no discretion to interpret the terms of the County/ICMA contract, and no discretion to disagree with or take any steps to interfere with the performance of that contract.

4. Issue an alternative writ in mandamus, pursuant to Fla. R. Civ. P. 1.630(d)(2), directing the Clerk to show cause why the Court should not enter a writ of mandamus requiring the Clerk to:

a. Take all steps necessary to comply with the contract between the County and ICMA, including making the employer contributions for those Elected Officers who are opted into the Local Plan, and doing so at the rate set in the contract (the "FRS Rate" as defined in this complaint).

b. Make the necessary contributions to resolve the shortfall caused by the Clerk's unilateral decision to cut the contribution rate during 2021 and the Clerk's unilateral decision to stop making contributions entirely during 2022.

c. Refrain from seeking re-payment or compensation from Commissioners Bender, May and Barry for past employer contributions made by the County under the local program.

5. After appropriate due process, issue a final writ in mandamus incorporating the same relief sought here.
6. Reserve jurisdiction to enforce the Court's orders.
7. Order any other relief that the Court finds just and appropriate.

## ARGUMENT IN SUPPORT OF COMPLAINT

The following is the County's "argument in support of the complaint with citations of authority." Fla. R. Civ. P. 1.630(b)(3).

Florida law imposes a clear, ministerial duty on the Clerk to do something simple: "be clerk and accountant of the board of county commissioners." Section 125.17, Fla. Stat. *Only* the Clerk can be the Board's accountant. The Board can *only* spend its money through the Clerk.

That means the Clerk's role here is not discretionary; it's the definition of ministerial. She is given no authority in the Florida Statutes to interpret laws and make policy decisions on her own. The People elected the Commissioners to make laws and enter into contracts, and the People elected the Clerk to be a clerk. The Court should promptly enter an alternative writ of mandamus and require the Clerk to come forward and explain why she should not be compelled to follow the law. Then, the Court should summarily overrule any of the Clerk's objections and enter a final writ of mandamus because the Clerk will have no legitimate reason to avoid performing her simple ministerial duty.

If factual evidence is necessary to resolve this very straightforward legal matter, then the County predicts that the Court will ultimately find as follows: The Clerk and each of her predecessors *did* follow the law and the County/ICMA

contract, from inception in 1997, until the summer of June 2021. The Court will find that—at least in the mind of the Clerk—a personal, political dispute arose between the Clerk and certain Commissioners at that same time. And then the Court will find that shortly thereafter, the Clerk decided to reduce the payments she had been making to ICMA. The Court will find that, for 2022, the Clerk decided to stop the payments entirely. The Court will also find that the Clerk’s reducing and stopping payments applies *only* to the Commissioners and no one else in the Local Plan.

Whether the Clerk’s decisions are based on petty, personal animus that has nothing to do with her oath of office or the law is, as of right now, a question that has not been settled—because it is not time for the County to put factual evidence of that before the Court. Such evidence does exist and can readily be the subject of discovery if necessary.

But the only issue today is: In this Complaint, has the County made out its *prima facie* case, demonstrating that it is entitled to an alternative writ of mandamus against the Clerk, to compel her to perform a ministerial duty? The answer is Yes.

**I. The legal standard for mandamus relief.**

The recent decision of *Maloy v. Seminole County*, 264 So. 3d 370, 372 (Fla. 5th DCA 2019) gives the standard for mandamus relief:

Mandamus is a common law remedy sued to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law. *Poole v. City of Port Orange*, 33 So. 3d 739, 741 (Fla. 5th DCA 2010) (citing *Puckett v. Gentry*, 577 So. 2d 965, 967 (Fla. 5th DCA 1991)).

A duty or act is ministerial when there is no room for the exercise of discretion, and the performance begin required is directed by law. *Austin v. Crosby*, 866 So. 2d 742, 744 (Fla. 5th DCA 2004).

The petitioner must show a clear legal right to the relief requested and ‘an indisputable legal duty on the part of the respondent’ to act. *Bennett v. Clerk of Circuit Court Citrus Cty.*, 150 So. 3d 277, 278 (Fla. 5th DCA 2014) (citing *Bernard v. State*, 911 So. 2d 1259, 1260 (Fla. 5th DCA 2005)).

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(Line breaks inserted.)

*Holcomb v. Dept of Corrections*, 609 So. 2d 751, 753 (Fla. 1st DCA 1992) gives the procedure. First, this Court must review the County’s complaint for and determine whether the County has made out a *prima facie* case alleging an official’s failure to perform a ministerial duty. If so, the Court must issue an alternative writ of mandamus. The County’s Complaint, including this argument, becomes incorporated into the alternative writ, which the County will promptly serve on the Clerk. Once the alternative writ of mandamus is served, the Clerk must respond as provided in Fla. R. Civ. P. 1.140 and 1.630(e). If there are any factual disputes to resolve—such as the Clerk’s true motive in stopping these decade-long

payments—the Court may allow discovery and must make a factual determination on the evidence submitted by the parties before ruling on the issuance of a final writ of mandamus.

**II. The Local Plan is sound, based on settled law and a settled contract, and it is the Clerk’s duty to permit the County to expend funds on it.**

**A. The Local Plan is legal.**

As explained in the Complaint, the legal authority for the Local Plan is:

- The County Board of Commissioners passed Resolution R97-1 on January 7, 1997. (Compl. ¶ 11 & Ex. 1.)
- R97-1 was codified at Section 2-151 of the County Code of Ordinances. (Compl. ¶ 12 & Ex. 2.)
- The County entered into a contract with ICMA in 1997, Compl. ¶ 14 & Ex. 1, at p. 4.
- That contract has been amended and reaffirmed by both sides repeatedly over the years. The most recent version was signed in 2016 after review and acceptance by the County Attorney. (Compl. Ex. 5.)

Escambia County’s broad home rule authority is sufficient to authorize this contract. *See* Article VIII, Section 1(f), Fla. Const. (providing counties to have “such power of self-government as is provided by general or special law”). “Unless the legislature has pre-empted a particular subject relating to County government either by general or special law, the County governing body . . . has full authority to act through the exercise of home rule power.” *Speer v. Olsen*, 367 So. 2d 207 (Fla.

1978). Not only has the Legislature *not* barred Escambia County from legislating on this topic, it has directly authorized it.

That authorization is found in Section 121.182, which expressly permits counties and cities to create local retirement programs for the benefit of county personnel. Section 121.182 states in pertinent part, “[m]unicipalities and counties are authorized to invest funds, purchase annuities or provide local supplemental retirement programs for the purposes of providing annuities for city or county personnel.”

The sole limitation for any local retirement plan that complies with this statute is found in Article X, Section 14 of the Florida Constitution, which requires the local retirement program be “actuarially sound.” *Id.* Section 125.01(1), Fla. Stat., accords a county all power not inconsistent with general or special law. Section 125.01(3)(a) further imbues a county with all implied powers appropriate to determine benefits available to different types of personnel.

Either the home-rule authority, or the special statute authorizing the Local Plan, is an adequate basis for the Court to find that the Local Plan is grounded in good law.

**B. The Clerk’s duty is to make payments on behalf of the County.**

By statute, the clerk is bound to follow the financial direction of the County, acting through its Board. The statute is short and plain:

The clerk of the circuit court for the county shall be clerk and accountant of the board of county commissioners. He or she shall keep their minutes and accounts, and perform such other duties as their clerk as the board may direct. The clerk shall have custody of their seal, shall affix the same to any paper or instrument to which it shall be proper or necessary that the same shall be affixed . . . .

Section 125.17, Fla. Stat. The meaning is clear: The Clerk is the Board’s accountant. The Clerk “shall” keep the accounts and perform duties as directed. To the extent anything needs to be signed or sealed on behalf of the County, the Clerk “shall affix the same.”

To be even clearer, that means if the Board directs the Clerk to issue a check, the Clerk must do it.

As set out in this Complaint, however, the Clerk failed to make full contributions for the Commissioners to the Local Plan during 2021, and ceased making any contributions for the Commissioners during 2022. The Clerk has no proper authority to make these decisions and no legal basis to stop doing these things.

But more to the point for today’s brief: by pointing to the Clerk’s simple duty to act as an accountant and set the County’s seal on documents, the County has made out its *prima facie* case that an alternative writ of mandamus should issue to the Clerk.

### III. The Clerk’s other arguments will fail.

By having made out a *prima facie* case here, the County has met its obligation under Rule 1.630 and is entitled to an alternative writ of mandamus.

In her informal communications and in letters from her staff, the Clerk has argued—contrary to the County Attorney’s position and the position of the County Attorney’s independent outside counsel—that there are reasons the Clerk cannot make payments under the Local Plan. Again, it is worth stressing that:

- Until June 2021, this Clerk and all previous Clerks raised no issue with the Local Plan.
- The Clerk believes she has an ongoing personal dispute with certain Commissioners, including two of whom are affected by her unlawful refusal to make the payments.
- The Clerk took a first position on the legality of the Local Plan for the first half of 2021, took a **second** position on its legality in the second half of 2021, and has taken a *third* position now in 2022.
- Nothing in the law or the contract has changed during 2021 or 2022. But the timing of the personal dispute the Clerk raised is certainly telling.

Again, this Court can and should issue an alternative writ to the Clerk now, and can theoretically rule for the County on the final writ without wading into the factual dispute. The statute that the Clerk must act as the Board's accountant and a clerk is just that clear.

Even if the Clerk raises challenges to the wisdom of the Local Plan, a ministerial official such as a Clerk does not have the right or authority to interpret for herself of contractual provisions or policy decisions made by legislators.

There are several relevant authorities which foreclose, at this earliest stage, such arguments by Clerks. *See Schloesser v. Dill*, 383 So. 2d 1129, 1131 (Fla. 3d DCA 1980) (finding the Board's decisions, even when not reduced to a formal written "contract," still constitute valid and enforceable contract); *Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So.2d 4, 5 (Fla. 1984) ("Where the legislature has, by general law, authorized entities of the state to enter into contract or to undertake those activities which, as a matter of practicality, require entering into contract, the legislature has clearly intended that such contracts be valid and binding on both parties.").

Florida courts have repeatedly issued writs of mandamus to require signatures on vouchers even where the official argued such payments were not authorized. For instance, in *State ex rel. Miller v. Marshall*, the president of the

Jacksonville City Council refused to sign vouchers for the plaintiff's salary, claiming that Plaintiff had not been duly appointed by a 2/3 majority of the City Council. 184 So. 870, 871 (Fla. 1938). The Florida Supreme Court rejected the objections and issued the writ, concluding that the president "failed and refused and continues to fail and refuse to sign the said vouchers" as required by both city ordinance and city charter and his ministerial duties. *Id.* See also *Carson v. Hollingsworth*, 381 So. 2d 1144, 1145 (Fla. 1st DCA 1980) (enforcing the decision of the Civil Service Board to provide a pay increase to an employee and rejecting the defendant's argument that the Civil Service Board lacked authority to do anything other than review pay plans and report findings to city council and mayor).

Finally, in a situation such as this, where the Defendant's conduct in refusing to continue to make payments is totally arbitrary and motivated by personal or professional vendettas against others, courts have found writs of mandamus to be appropriate remedy for securing performance of an official's obligation when they are responding in a "totally arbitrary manner." See, e.g., *Bd. of Sup'rs of Englewood Water Dist. v. State ex rel. Englewood Beach Mobile Home Park, Inc.*, 223 So. 2d 48, 48 (Fla. 2d DCA 1969).

When the Clerk responds to the alternative writ of mandamus, she must explain why she has standing to challenge the Board’s legislative enactments and policy decisions.

Moreover, the Clerk should also explain her disparate treatment during 2021 of County Commissioners vs. other members of the County’s Senior Management Service (SMS). In the second half of 2021, while the Clerk had raised her beef with the Local Plan as a whole, she still continued to make full payments, at the FRS Rate, under the Local Plan for senior employees. *Only* the three County Commissioners faced the reduced contribution rate the Clerk unilaterally selected. If the Clerk’s objection was that the FRS Rate is incorrect, why did she continue to make payments for SMS employees at that Rate? This is just further evidence of the Clerk’s arbitrary misconduct and potentially impermissible motives.

Making contributions—printing checks—is a ministerial duty. This is consistent with past Florida Supreme Court decisions which have held that the Governor’s participation in state warrants “is ministerial in nature” except in those situations where constitutional discretion and judgment are *clearly* involved. *Willits v. Askew*, 279 So. 2d 1, 3 (Fla. 1973). The Clerk simply does not sit in a seat where any discretion or judgment is clearly involved. To the contrary, the Clerk must act as a “clerk and accountant” — and no more. Section 125.17.

## CONCLUSION

The Clerk is ignoring the lawful directives of the County contrary to her clear ministerial duty to fund the Local Plan. And the Clerk is potentially causing the County to suffer liability to other parties, including ICMA. Finally, the Clerk herself knows that Commissioners cannot leave the Local Plan for the FRS.

There is no legal remedy for the Clerk's refusal to carry out her duty other than by a writ of mandamus issued by this Court.

The County believes it has made out its *prima facie* case for an alternative writ. Thus, the County respectfully asks the Court to enter such a writ as soon as possible.

Respectfully submitted,

/s/ Troy A. Rafferty

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