

COLIN BAENZIGER  ASSOCIATES

EXECUTIVE RECRUITING

Section 3

Aleksandr “Alek” Boksner

Fort Lauderdale City Attorney

Candidate Report

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Cover Letter and Resume

Aleksandr Boksner
700 Heritage Way, Weston, Florida 33326
305-216-6258

July 5, 2018

Colin Baenziger
Colin Baenziger & Associates
2055 South Atlantic Avenue, Suite 504
Daytona Beach Shores, Florida 32118

Sent Via Electronic Mail
Recruit37@cb-asso.com

RE: City of Fort Lauderdale, City Attorney Position

Dear Mr. Baenziger:

Please accept this Letter of Interest, Resume and Professional References in regards to the City Attorney Position with the City of Fort Lauderdale, Florida.

I am currently the Chief Deputy City Attorney for the City of Miami Beach, Florida, and provide legal counsel to the Mayor and City Commissioners, the City Administration and the various City Departments on a broad spectrum of legal issues. More specifically, I am responsible for those matters that involve the City's governmental business operations, land use interpretation and drafting, federal and state litigation, statutory implementation, application and procedures, labor and employment, and other numerous legal matters that impact the governmental functions of the City of Miami Beach.

At your earliest convenience, please review my resume to further evaluate my candidacy for this excellent position. I look forward to discussing my qualifications in further detail and welcome the opportunity for an interview. Thank you for your consideration.

Sincerely,

/s/ Aleksandr Boksner

Aleksandr Boksner

ALEKSANDR BOKSNER
700 Heritage Way, Weston, Florida 33326
305-216-6258

SUMMARY OF PROFESSIONAL EXPERTISE AND STRENGTHS

- Over seventeen years of extensive experience in advising on, operations, regulatory compliance, policies, procedures, financing and administrative guidance on government business practices, including management of regulatory departments, principles of civil, constitutional and administrative law, preparation of resolutions and ordinances, liaison with corporate vendors, contractors, citizens and external agencies on sensitive and controversial issues, and formation of cost-effective and goal-oriented legal compliance with emerging legal disputes (contractual and statutory).
- Strong government counsel orientation with extensive experience advising elected officials and government departments on all aspects of governmental compliance, litigation (commercial, land use, construction, tort and appellate), sovereign immunity, employee relations, legislative process and procedure, contract formation and drafting, governmental procurement and purchasing (traditional procurement and Job Order Contracting), and various aspects of public/private development agreements, including modifications, operability studies and fiscal challenges, and in connection with these entities day-to-day business activities, interaction with vendors, contractors, federal and state entities and officials.
- Strong senior counsel with substantial experience in advising, and working with, elected officials (and government administration) and private business colleagues on various public/private governmental contracts and legal issues, risks, preferred outcomes and strategies.
- Strong substantive knowledge and analytical skills, with excellent judgment and ability to quickly and effectively identify, assess, communicate and resolve legal and, as appropriate, business issues as necessitated by municipal policy requirements, objectives and the law.
- Excellent interpersonal, communication (written and verbal), negotiating and drafting skills.
- Apply critical thinking to issues, demonstrating resourceful, pragmatic and creative approach to issue solving and addressing governmental entity and municipal-related policy objectives.

PROFESSIONAL EXPERIENCE

The City of Miami Beach, a municipal corporation <i>Chief Deputy City Attorney, Miami Beach, Florida</i>	2009 to Present
Marion County, Florida, a political subdivision of the State of Florida <i>Chief Assistant County Attorney, Ocala, Florida</i>	2008 to 2009
Charlotte County, Florida, a political subdivision of the State of Florida <i>Chief Litigation Attorney, Port Charlotte, Florida</i>	2005 to 2008
NRT, Inc. <i>Associate Counsel, Weston, Florida</i>	2004 to 2005
Office of the State Attorney, Eleventh Judicial Circuit of Florida <i>Assistant State Attorney, Miami, Florida</i>	2001 to 2004

BAR ADMISSION AND EDUCATION

Bar Admission
Florida, 2001
Tennessee, 2008

University Of Toledo College Of Law, Toledo, Ohio
Juris Doctor, 2001

University of Cincinnati, Cincinnati, Ohio
Bachelor of Arts, 1998

LANGUAGES

English and Russian

DESCRIPTION OF EXPERTISE AND EXPERIENCE

Government Counsel

Extensive experience representing, advising and rendering legal opinions to elected officials, managers/administrators, boards, commissions and other staff on all aspects of governmental business operations and governance, operations and policy initiatives, and other aspects of their regulatory compliance, business function, labor and employment, and litigation. Advised governmental entities in connection with their day-to-day activities and contractual relationships and obligations, including aspects pertaining to vendors, citizens, suppliers, contractors and employees, and reviewing and preparing agreements relating to such matters, including project specific agreements, Job Order Contracting, land use licensing and permitting, memorandums of understanding, mutual aid and cooperation assistance agreements and consent agreements. Experience in analyzing pending and proposed legislative (federal and state) action impacting the administration, operation and functionality of the governmental corporations, and the investigation of complaints and claims involving all aspects of government departments, staff and programs.

Regulatory, Compliance and Litigation

Extensive experience ensuring compliance with municipal, state and federal ordinances, statutes, regulations and codes, including, Florida Building Code, National Fire Prevention Code, Local Government Code Enforcement Boards Act, Drug-Free Workplace Act, Florida Public Records Act, Florida Contraband Forfeiture Act, False Claims statutes and ordinances (Federal, state and local), Florida Uniform Traffic Control Law, Florida Vessel Safety Law, Whistle-blower's Act, Clean Water Act, Criminal and Civil Justice Policy Council, Bank Secrecy Act, 31 U.S.C. Section 5311 – 5332, Florida Anti-Fencing Act, Florida Communications Fraud Act, Florida Money Laundering Act, Florida Mutual Aid Act, Bert J. Harris, Jr. Private Property Rights Protection Act and Florida Land Use and Environmental Dispute Resolution Act. Experience as Chief Litigation Counsel for lawsuits in federal and state courts representing public entities for violation of the United States Constitution and Florida Constitution, defense of various statutory and common law causes of action, including regulatory taking, inverse condemnation, eminent domain, 5th Amendment taking under §1983, covenants of good faith and fair dealing, doctrine of recoupment, termination of contractual agreements for convenience, littoral takings, public records law, and all other litigation matters impacting governmental business operations.

Government Contracting

Extensive experience representing governmental entities in collaborating, documenting and completing contractual agreements pursuant to the Florida Interlocal Cooperation Act of 1969, and those contractual agreements involving purchase and sale, architecture and engineering, Federal cost reimbursement, administrative services, indemnity and hold harmless, independent contractor, sponsorship agreements, utility franchise, Capital Improvement Project (CIP) design build, risk services, licensing, invitation to bid (ITB), request for qualification (RFQ), request for proposals (RFP), professional services, artist, revocable permits and easements, concessionaire, street scape and management. Extensive experience in negotiating and drafting agreements documenting these contractual agreements, including terms, conditions, modifications, amendments, demands, cure letters, notices of default, as well as those documents mandating indemnification and the assertion of a legal defense. As part of each contractual agreement, managing and coordinate the involvement of relevant staff and professional experts in those areas which directly impact the specific governmental operations and functions.

Candidate Introduction

ALEKSANDR BOKSNER

EDUCATION

Juris Doctor, **University Of Toledo College Of Law**, Toledo, Ohio
Bachelor of Arts, **University of Cincinnati**, Cincinnati, Ohio

EXPERIENCE

<i>Chief Deputy City Attorney, The City of Miami Beach</i> , Miami Beach, Florida	2009 to Present
<i>Hearing Officer, The City of North Miami Beach</i> , Florida	2015 to Present
<i>Special Magistrate, The Town of Surfside</i> , Florida	2012 to Present
<i>Chief Assistant County Attorney, Marion County</i> , Florida	2008 to 2009
<i>Chief Litigation Attorney, Charlotte County</i> , Florida	2005 to 2008
<i>Associate Counsel, NRT, Inc.</i> Weston, Florida	2004 to 2005
<i>Assistant State Attorney, Office of the State Attorney</i> , Miami, Florida	2001 to 2004

BACKGROUND

The City of Miami Beach has been known by many as America’s Riviera, a cosmopolitan city whose residents are as diverse and varied, as its visitors that span from nearly every country on the globe. The City of Miami Beach is known for having over 7 miles of gorgeous Beaches, which are nestled against the radiant blue waters of the Atlantic. This island City boasts 3 Golf Courses; 20 Parks, Art and Culture, Dining and Nightlife and World-Class Shopping.

Miami Beach is considered by most, and has been identified by many, as a trend-setting arts and entertainment Mecca, and a shopping and cultural wonder by visitors, world travelers, celebrities and locals alike. The City has always been a tourist-friendly vacation hot spot, but the city offers so much more beyond the traditional vacation destination. Miami Beach is no longer just a place to lay on the beach soaking up the sun, but an economic boom that has sprung from the refurbishment of the Art Deco Historic District. Miami Beach has café’s, clubs and shopping along South Beach’s Ocean Drive, Lincoln Road, and Washington Avenue; the international hotels and restaurants of Collins Avenue and Middle Beach; to the re-emerging neighborhood in North Beach, Miami Beach offers visitors and residents a dazzling array of amenities to enjoy.

The current population of the City of Miami Beach is 91,562, however; the City’s population surges with the influx of approximately 8.5 million visitors annually.

The Office of the City Attorney consists of 24 full time employees, which includes 14 attorneys and 10 support staff members that are dedicated to providing excellent legal services to the Mayor, City Commissioners, City Manager, City Agencies and Committees. Further, the City Attorney’s Office has participated in the University of Miami School of Law Clinical Skills Externship

ALEKSANDR BOKSNER

Program and the Florida International University School of Law Externship Program, which places second and third year law students with the Office as interns for a semester.

I directly supervise a total of 21 employees within the City Attorney's Office, which reflects the direct supervision of 12 attorneys (excluding outside litigation counsel). At present, it is estimated that the City Attorney's Office performs approximately 85 percent of the total legal work for the City, and the remaining 15 percent is accomplished by outside counsel.

The most significant issues facing the City of Miami Beach are:

- Quality of life issues/offences. The City of Miami Beach is the epicenter for transient rentals (among other code enforcement matters), and the City has taken an aggressive posture with prohibiting the illegal transient rentals within those specified zoning districts. Equally compelling, the City has endured consistent struggles in meeting those demands for ensuring the health, safety and security of its residents and visitors during high impact weekends and events (e.g., Memorial Day, 4th of July, New Year's Eve, Art Basel, etc.).
- A balanced approach between citizens and visitors. The City has labored to establish a balanced approach to intensive development and redevelopment through those amendments to the City's Land Development Regulations. Regrettably, the City has faced scrutiny by its residents, developers and other stack-holders that such continued development/redevelopment would burden its roadway infrastructure with excessive vehicle congestion, which combined with further pressure on the City's ailing water and wastewater systems, serves as a negative impact to the overall perception of the City.
- Sea level rise and climate change impacts on the City. The City has endured issues surrounding the impact of climate change, especially; the effect of sea level rise upon the City's aging infrastructure.

GENERAL, MANAGEMENT STYLE AND EXPERIENCE

I have developed a broad range of legal skills, which have allowed me to provide extensive legal guidance to various governmental entities on their operations and governance, policy initiatives and other aspects of a county/city business functions, litigation and land use. I have held significant legal positions at the Office of the County Attorney, Marion County, Florida; Office of the County Attorney, Charlotte County, Florida; and Office of the State Attorney, Miami, Florida. I have strived to develop, and sought to learn, a multitude of legal issues and concepts that could impact local government, in order to make certain that the legal advice that is provide by me is honest, concise and straight forward, and provides my client with the fullest extent of legal possibilities.

I consider the City of Fort Lauderdale to be a premier municipal entity in the State of Florida, which has dynamic and wide-ranging legal challenges. It would be an honor and privilege to be

ALEKSANDR BOKSNER

the City Attorney for the City of Fort Lauderdale, and to lead the City Attorney's Office of this great city.

I believe that the most important attributes of a successful City Attorney is working collaboratively within the governmental organization, and recognizing that approachability and responsiveness are essential elements to ensuring success. Equally important, the City Attorney must be capable of taking a leadership role, through clear and effective communication skills when faced with any legal adversity or challenge, by making certain not to sacrifice his ethical obligations to other elected officials or by transitioning into matters of public policy without assuring the proper legal level of transparency.

I take a rather aggressive approach to the defense of those lawsuits filed against the City of Miami Beach. It has been my practice to vigorously defend the City, and commence an intensive motion practice to challenge the validity of those allegations set forth in the lawsuit. I have discovered that the commencement of a lawsuit against a governmental entity should NOT automatically result in a monetary settlement, and that aggressively defending the actions of the City will serve to prevent others from initiating lawsuit that are frivolous and without any legal merit.

I would say that my management style is fluid, and not wholly comprised of any one specific structure or format. I believe that a leader must have the capabilities to adapt to a broad-range of management styles, and implement those styles according to the appropriate set of circumstances. With that said, I expect my employees to conduct themselves professionally, and accomplish their respective responsibilities in a timely manner...knowing that my door is always open to discuss possible ideas, strategies and best approaches to resolving pending legal issues or matters.

I feel that the elected officials should be apprised of, and receive any information, which could result in potential legal issues or consequences, or that could adversely impact the Mayor and City Commission. Certainly, I recognize that each elected official will provide further clarity on those matters which they deem important (and seek further briefings on any given subject matter), and once I have been able to properly establish this understanding, I believe that the information that would be forthcoming from me would be transparent, appropriate and avoid any confusion or misunderstandings. I predominantly communicate with the Mayor and City Commissioners either directly, in-person (provided they are in City Hall), or I will immediately call them to discuss any pending or evolving issues that could result in controversy or political consequences.

The Mayor and City Commissioners would most likely say that I am an outstanding attorney, who is well versed in a multitude of legal areas of Florida law, including land use and litigation. Furthermore, they would say that I am an exceptional legal professional, who provides clear and concise legal responses in a timely and effective manner. Lastly, I believe that they would not want me to leave the City, and that my departure would be a loss to the City itself and the Office of the City Attorney. However, the Mayor and City Commissioners would say that the City of Fort Lauderdale would be acquiring an incredible City Attorney. The City Manager would most likely say that I have provided exceptional legal advice to him and his staff during difficult (and

ALEKSANDR BOKSNER

not so difficult) circumstances, and that the City of Fort Lauderdale is fortunate to be gaining an incredible City Attorney to guide the Mayor and City Commissioners through all their legal matters.

My greatest strength is the ability to listen first, seek the appropriate input from those people who have essential facts and information, and consistently present legal options/opinions for consideration by the Mayor and City Commissioners, based upon a thorough analysis of all aspects surrounding a potential controversial or non-controversial legal issue.

I consider my weaknesses to be focused upon my desire, at times, to take on too many legal tasks or matters at the same time. I have diligently worked on acknowledging that my staff is capable of handle these legal matters, and that I am responsible for making certain that the legal work is accomplished without issue or incident.

I have been fortunate to have several achievements throughout my career. The most notable achievement would be the enactment of the City of Miami Beach's transient rental ordinances, which directly prohibits those persons from renting (daily, weekly, monthly rentals) in specified residential zoning districts throughout the City of Miami Beach. In conjunction with the enactment of these ordinances, I have drafted further legislation that was adopted by the Mayor and City Commissioners, which established detailed regulatory requirements that must be complied with before a property owner has the legally authority to advertise their property for transient rental. This legislation has thrust the City of Miami Beach in the forefront of the home-sharing debate and legal controversy, and its opposition to those web-based host platform operators (e.g., Airbnb or Homeaway).

In reference to a mistake that transpired during my career, I was handling a public records lawsuit that stemmed from the Memorial Day shooting in the City of Miami Beach. The Court ruled unequivocally in favor of the City, and recognized that there was a properly asserted active criminal investigative exemption as set forth in Section 119.071(2)(c)1 of the Florida Statutes. However, the Court did conclude that the "families" were entitled to "autopsy reports, autopsy results, any audio and/or visual recordings that took place shortly before, during or after the shooting, including 911 calls and dispatches and any other video recordings that may have been found on You Tube." Regrettably, I was under the impression that those materials identified by the Court were provided to me for remittance to the family of the deceased, but I subsequently discovered, that all of the records had, in fact, not been provided to me. I learned that in such controversial legal matters, I should have verified that all the materials and documents had been provided to me for remittance to the deceased family members.

In the first six months of being employed as the City Attorney:

- I would immediately meet with the elected officials in order to further identify and define the potential legal demands of the City, and to fully understand any prospective legal issues or matters that are expected to be addressed by the Office of the City Attorney.
- I would commence a detailed evaluation of the City Attorney's Office in order to make

ALEKSANDR BOKSNER

certain that the legal demands of the City of Fort Lauderdale, are not only being properly addressed, but that the legal staff is being diligent in exceeding the expectations of the Mayor and City Commissioners.

- I would be thoroughly assessing the City Attorney’s Office Budget, and determining any potential concerns that exist with the current adopted budget and the prospective budget for the following fiscal year.
- I would immediately identify, and be properly briefed; on any pending legal matters to ensure that the City of Fort Lauderdale is appropriately defending the allegations set forth within each lawsuit.
- I would be conducting meetings with the various Department Directors, and determining and assessing any potential issues or concerns that the individual departments face in response to their legal needs and inquires.

I work relatively well with the media, but do try to minimize the potential detrimental effects that could arise for those sensitive and controversial legal matters. Traditionally, I will work with the City’s Communications Department and the Office of the Mayor and City Commission on any media statements to ensure accuracy, and prevent any negative legal consequences for future litigation.

In my spare time, I embrace the freedom of riding my motorcycles, and spending time exercising and weight training.

I have not done anything that would embarrass the City of Fort Lauderdale, and do not have anything in my background that would be an embarrassment. Furthermore, I don’t anticipate any community activists contacting the City of Fort Lauderdale with any negative matters about me or any other persons from Miami-Dade County.

REASON FOR WANTING TO LEAVE CURRENT OR MOST RECENT JOB

I consider Fort Lauderdale to be a preeminent city. I have strived throughout my entire legal career for the opportunity to serve such a great municipality, and would welcome those challenges that accompany such an endeavor. It would be my absolute honor and privilege to serve as the next City Attorney for the City of Fort Lauderdale.

SIX ADJECTIVES OR PHRASES I WOULD USE TO DESCRIBE MYSELF

- Highly Professional
- Dedicated and Determined
- Persuasive and Creative
- Experienced

ALEKSANDR BOKSNER

- Knowledgeable
- Reliable and Responsible

CURRENT / MOST RECENT SALARY

My current compensation at the City of Miami Beach is \$209,272, excluding executive benefits and allowances.

Section 3

CB&A Background Checks

**Background Check Summary for
ALEKSANDR "ALEK" BOKSNER**

Criminal Records Checks:

Nationwide Criminal Records Search	No Records Found
County	
Miami Dade County, FL	No Records Found
Marion County, FL	No Records Found
Charlotte County, FL	No Records Found
Broward County, FL	No Records Found
State	
Florida	No Records Found

Civil Records Checks:

County	
Miami Dade County, FL	No Records Found
Marion County, FL	No Records Found
Charlotte County, FL	No Records Found
Broward County, FL	No Records Found
Federal	
Florida	No Records Found

Motor Vehicle

Florida	No Records Found
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Credit

Very Good

Bankruptcy

No Records Found

Education

Confirmed

Employment

Confirmed

Under the Fair Credit Reporting Act, 15 U.S.C. 1681-1681Y, credit and bankruptcy information are very sensitive and should not be used in the consideration of hiring. The information is included for each candidate because we do not want you to be surprised if third parties raise what they consider to be a concern.

**Background Check Summary for
ALEKSANDR "ALEK" BOKSNER
Personal Disclosure**

Personal Disclosure Questionnaire

Name of Applicant: ALEKSANDR BOKSNER

The following questions are designed so that we will be able to make full disclosure to our client concerning your background. Please answer them honestly. Cutting corners or misrepresenting your past will result in you being eliminated from all further searches conducted by this firm. We understand that frivolous charges are sometimes made and that charges do not mean you were guilty. We also understand that you may have been wronged and needed to seek compensation. The bottom line is that we want to be certain that our client is fully informed. If you have any questions, please contact us for clarification.

Please explain any yes answers on a separate sheet of paper.

1. Have you ever been charged or convicted of a felony?
Yes No
2. Have you ever been accused of or have been involved in a domestic violence or abuse incident?
Yes No
3. Have you ever declared bankruptcy or been an owner in a business that did so?
Yes No
4. Have you ever been the subject of a civil rights violation complaint that was investigated or resulted in a lawsuit?
Yes No
5. Have you ever been the subject of a sexual harassment complaint that was investigated or resulted in a lawsuit?
Yes No
6. Have you ever been convicted of driving while intoxicated?
Yes No
7. Have you ever sued a current or former employer?
Yes No
8. Do you have a personal My Space, Face Book or other type of Web Page?
Yes No
9. Do you have a personal Twitter Account?
Yes No
10. Is there anything else in your background that, if made public, would cause you, our client or our firm embarrassment if it came to light through the press or any other mechanism?
Yes No A Plaintiff and his wholly-owned corporation filed a frivolous lawsuit against the City for various alleged constitutional violations. The City prevailed on all claims, and the Federal Court ordered that the City was entitled to an award of all its reasonable attorneys' fees. The Plaintiffs paid the City \$600,000 for those attorney fees incurred, and Plaintiffs law firm paid the City \$100,000. Subsequently, the Plaintiff has issued erroneous and disparaging assertions against me and another attorney.

**Background Check Summary for
ALEKSANDR "ALEK" BOKSNER
Personal Disclosure**

11. Please provide a list of any lawsuits in which you are or have been a party either as plaintiff or defendant.

NOT APPLICABLE.

Attested to: _____



Signature of Applicant

Please email this form via PDF DOCUMENT to Lynelle@cb-asso.com or via fax to
(888) 539-6531 **no later than 5:00 PM PST 07/16/18.**

(Note: Please be sure to sign the form with your actual signature if you are sending Fax or PDF Document)

CB&A Reference Notes

**Reference Notes
Aleksandr Boksner**

Ricky Arriola – Commissioner, Miami Beach, FL 305-673-7107

Mr. Arriola has known Mr. Boksner since about 2015. Mr. Arriola is currently on the commission and feels Mr. Boksner has done a remarkable job as Chief Deputy City Attorney. Mr. Boksner gets along very well with the commission and has a strong legal knowledge. He knows state statutes and ordinances backwards and forwards. State law base dictates with the city can and cannot do. Everyone on Commission knows if they have any questions, to direct their questions to Mr. Boksner.

Mr. Boksner is consistently responsive and gets things done in a very timely manner. Their current city commission is extremely demanding but Mr. Boksner works through various projects and assignments in a prompt manner. Mr. Boksner legal experience lies in environmental law, constitutional law, land use, and development. Mr. Boksner has overseen several special mastery cases involving businesses that are not operating the best way they can. Mr. Boksner works with them to make sure that their professional behavior improves.

Mr. Boksner next good recommendations to the commission and exhibits sound judgement in his decision-making skills. Mr. Arriola cannot remember an instance where they have not followed Mr. Boksner's counsel. Mr. Boksner is good about finding solutions, especially with cases involving preemption from the state. One instance they are dealing with right now is regarding whether electric scooters are permissible on the right of way, but they also cannot be allowed on sidewalks. Certain barriers have been laid out by the state and Mr. Boksner has been instrumental in working with them to find a feasible solution. Mr. Boksner's knowledge base surrounding health, transportation, and statutes is incredible. Other city attorneys primarily oversee contract law, but Mr. Boksner does also have experience in that space. Mr. Boksner is professional and has great follow-through. He communicates very well and make sure that Mr. Arriola knows where he is on various items.

When dealing with the public, Mr. Boksner is non-biased. He is extremely relaxed and approachable. Mr. Arriola considers himself lucky to know Mr. Boksner and is confident his ability to act as a City Attorney for Fort Lauderdale. Mr. Boksner has an impeccable background and Mr. Arriola would absolutely hire Mr. Boksner.

Words or phrases used to describe Aleksandr Boksner:

- Relaxed,
- Intelligent,
- Knowledgeable,
- Unbiased,
- Communicative, and
- Experienced.

**Reference Notes
Aleksandr Boksner**

Strengths: He has encyclopedic state statute knowledge.

Weaknesses: None identified.

Daniel Oates – Chief of Police, Miami Beach, FL 305-673-7925

Mr. Oates has known Mr. Boksner since June of 2014 when he came to the police department of the city of Miami Beach. During this time, Mr. Boksner has been the police department's legal advisor and has been a great asset to their division. Because Mr. Boksner had so many things on his schedule and was spread so thin, they agreed that he would hire an assistant adviser who now serves as the police adviser and reports directly to Mr. Boksner.

Mr. Boksner handles many complex legal matters for the city of Miami Beach. Miami Beach is the center of entertainment. Although they only have 90,000 residents, over the year they also have 250,000 additional people and 12 million visitors. As a result, their city is full of high-rise and luxury hotels and is the mecca for tourism on an international scale. The city also holds about 270 special events per year. As a result, they significantly rely on Mr. Boksner for help in addressing legal matters that arise. Mr. Boksner oversees labor and personnel issues of about 550 people for the city.

Mr. Oates also happens to be an attorney and practiced for the New York police department. Mr. Boksner is concerned, and holds high regard for his skills in the analyses of problems. Mr. Boksner routinely discusses different perspectives and offers solutions. In addition, Mr. Boksner is sympathetic to the various demands on him as a Police Chief. Mr. Oates cannot recall an instance wherein Mr. Boksner has provided counsel to the commission, that they then ignored. In his opinion, if the commission does not follow the city attorney's legal advice, it is at their own peril. That said, vigorous discussions have taken place regarding the right approach to take. Mr. Boksner works to find solutions within the bounds of the law.

Mr. Boksner has worked on many ordinances, which involved drafting and negotiating with elected officials. During city commission sessions, Mr. Boksner interacts with the public, presents various legal aspects, and usually includes dialogue with the committee and comments from the public. He handles these instances very well. He has a strong constitutional law background and approves all contracts. The city of Miami Beach also has a significant challenge with homelessness, which Mr. Boksner has been involved in addressing. Fort Lauderdale would be getting a winner if they chose to hire him as a City Attorney. Nothing in Mr. Boksner's background could be construed as controversial.

Words or phrases used to describe Aleksandr Boksner:

- Confident,
- Direct,

Reference Notes
Aleksandr Boksner

- Bright,
- Responsible,
- Professional, and
- Honest.

Strengths: He has a high degree of personal integrity that is evident in the work he does and the way he treats those around him.

Weaknesses: None identified.

Philip Levine – Former Mayor, Miami Beach, FL 305-673-9500

Mr. Devine has known Mr. Boksner since about 2014. Mr. Devine was the prior mayor for the city of Miami Beach. During their time working together, Mr. Boksner did a tremendous job. He was diligent, respected, organized, and had an incredible strength of integrity. His knowledge was encyclopedic. Mr. Boksner got along extremely well with the commission and was admired by them. An instance never arose of the commission not liking Mr. Boksner.

Mr. Boksner expressed his legal opinion, gave the commission the pros and cons to any moves they considered, and then let them make the decision. However, he was always conscious to spell out the legal implications for both sides. Mr. Boksner also came to meetings prepared. Although he has strong expertise in legal matters, he does his homework and researches when necessary so that he does not come into a situation unprepared.

Mr. Boksner dealt well with the public. In any given meeting, if a question arose that was completely out of left field, Mr. Boksner did not guess or speculate, but researched when necessary. Mr. Boksner has vast experience dealing with legal matters surrounding the homeless population. He has also worked heavily in development and land use. Mr. Boksner was never against or pro development, but instead provided a just, fair, and even-handed opinion. He was careful never to steer a conversation for any potential project, but left that up to the elected leaders.

Mr. Boksner is one to always provide solutions or ideas but not someone who tries to create false hope. He is very much a realist. He helps to provide creative solutions, so long as that solution is in line with the letter of the law. Mr. Devine was impatient and had no tolerance for delays, but never had to worry about Mr. Boksner not following through on an assignment or being prompt in his response.

Mr. Devine has worked with several city attorneys over the years and many have been very good, but Mr. Boksner was truly amazing. In fact, Mr. Devine has felt like Mr. Boksner has been underutilized in his current position. Mr. Devine would hire him without question and knows that Fort Lauderdale would be lucky to have him as a City Attorney.

**Reference Notes
Aleksandr Boksner**

Words or phrases used to describe Aleksandr Boksner:

- Realist,
- Forthright,
- Problem-solver,
- Fair,
- Respected, and
- Experienced.

Strengths: He balances tough issues and assignments without getting frazzled. He shows selfless concern for others.

Weaknesses: None identified.

Joy Malakoff – Former City Commissioner, Miami Beach, FL 305-778-7549

Ms. Malakoff has known Mr. Boksner since November of 2013, when she was elected to the Board of Commissioners for the city of Miami Beach. She is currently on the planning board and board of adjusters. In addition, she has also chaired the land use committee. Mr. Boksner has done a wonderful job as their Assistant City Attorney and has worked on several instances of land use rights legislation.

Mr. Boksner has represented their board of commissioners well. One of the most important things he has been involved in has been drafting important legislation related to short term rental ordinances. Airbnb has caused a great deal of disruption to local neighbors and Mr. Boksner has been instrumental in developing the land development ordinances. He also was a proponent to red light cameras and defended the city in defense of their police officers. Recently the city brought in a new chief who requested body cameras. Mr. Boksner drafted that legislation and was a legal adviser to the police department. The police department in their area is taxed with high traffic parts of the city plagued by criminal behavior. One area right next to the ocean initially started with panhandlers and minor drug violators. However, more and more issues arose with events like Urban Beach Week.

The commission asked for a new ordinance to regulate the behaviors of sidewalk cafes. For example, some of the cafes were being operated in negative manner, offering food to passersby and shoving menus in everyone's face as they walked by. Mr. Boksner drafted an amendment to an existing ordinance prohibiting predatory conduct. Mr. Boksner also handled all public records lawsuits, as well as investigations involving some of the governmental officials within the city. Mr. Boksner has much on his plate, but continues to be extremely responsive. He is incredibly knowledgeable. Sometimes Ms. Malakoff will ask him something and he knows it backwards and forwards; but when he does not know, he takes the time to look it up before given an offhand answer.

**Reference Notes
Aleksandr Boksner**

Mr. Boksner is extremely good at finding solutions. Sometimes he will look at other municipalities and see what they can do since the state is so preemptive in dictating what cities are able to do. For example, the state has recently come down hard on plastic bags and straws and so Mr. Boksner has tried to work around that issue by using paper straws in their communities. He also has experience in dealing with homeless population. In fact, some of the issues on beach drive, and the park across from that area have had issues with their homeless population. Although the police have a special task force, Mr. Boksner has also been involved. Some of Mr. Boksner expertise involves land use, changes in regulations and rules for building homes, improving impervious spaces, and the heights of new buildings. He is also instrumental in encouraging renovations and new buildings. Aside from her professional recommendation, Ms. Malakoff really likes Mr. Boksner as a person and knows that he would make an excellent city attorney for Fort Lauderdale. Nothing controversial or embarrassing exists in Mr. Boksner's background.

Words or phrases used to describe Aleksandr Boksner:

- Friendly,
- Knowledgeable,
- Nice,
- Brilliant,
- Articulate, and
- Detail-oriented.

Strengths: He has excellent communication skills. He is organized and a leader with high integrity.

Weaknesses: None identified.

Richard Ovelman, Esquire – Attorney, Carlton Fields, Miami, FL 305-530-0050

Mr. Ovelman has known Mr. Boksner since Mr. Boksner came on board with the city of Miami Beach in 2009. Currently, Mr. Ovelman serves as the outside counsel to the city and litigation. From his vantage point, Mr. Boksner has done an outstanding job. It will be too bad for the city if Mr. Boksner leaves for Fort Lauderdale, because he has been a strong person in-house for them.

Mr. Boksner gives good direction to the commission, and is meticulous in reading all the materials and making good comments. Mr. Ovelman's firm works with him closely, as if he was a member of their own for him. And from the outside, they really like him. Under Mr. Boksner's direction, the city has been able to get back about \$1 million in attorney fees for the city. Mr. Boksner provides good counsel to the commission, but does not try to override what the outside counsel directs. He brings substantial knowledge of the law and the city's underlying policies and needs to each case. He gets along with the commission very well as well as the outside counsel.

**Reference Notes
Aleksandr Boksner**

There will always be times when a commission disregards council, but overall, Mr. Boksner has been successful in getting them to follow his legal advice. If Mr. Boksner anticipates problems, he sometimes involves outside counsel to help. Mr. Boksner makes good decisions and far exceeds what you would want for a city attorney.

In no area does his performance fall short. So many things could go wrong if a city attorney was too eager to please, and would allow the commission to get into trouble. Mr. Boksner was not one of those. He has extremely high integrity and anyone who hires him would never have to worry about corruption. He is not a loose cannon but very considerate in his judgments. He makes judgments on which cases can be reasonably handled with in house staff and which require some outside assistance.

Mr. Boksner has experience regarding contracts, personnel, and HR. While Mr. Ovelman predominantly litigates contract issues, Mr. Boksner has been on litigations that involve complex contractual arrangements, leases, and obligations with the city. Mr. Ovelman would hire Mr. Boksner without reservation and knows that Fort Lauderdale would be lucky to have him.

Words or phrases used to describe Aleksandr Boksner:

- Experienced,
- Professional,
- Dedicated,
- Knowledgeable,
- Candid, and
- Confident.

Strengths: He makes good judgments about cases, whether they are subject to outside litigation or resolved.

Weaknesses: None identified.

Dan Gelber – Mayor, Miami Beach, FL 305-673-7035

Mr. Gelber has known Mr. Boksner since 2009 when Mr. Boksner came to the city of Miami Beach. Mr. Gelber has been mayor since November and spent the previous 10 years in legislature. He has worked closely with Mr. Boksner during his time at the city of Miami Beach because many issues are present in their city with respect to firearm issues, development issues, and Airbnb's.

Mr. Boksner conducts himself extremely well, whether he is interacting with the commission, or the public. For example, many meetings are attended by those with an adversarial view of the city. Even when Mr. Boksner is unable to help members of the public, he is solicitous and careful. Mr.

**Reference Notes
Aleksandr Boksner**

Boksner works with the commission extremely well and Mr. Gelber has never heard any complaints from anyone about him, which is rare.

Some extremely difficult meetings have involved ongoing issues with Airbnb. Airbnb has a higher presence in their city within neighborhoods that currently have a bar against home sharing. It has been difficult to negotiate and pass legislation involving constraints for Airbnb's, but Mr. Boksner's legal knowledge has been invaluable. Mr. Boksner is blunt. He holds an unvarnished view of what might happen in any given situation, and the exposure the city will experience. He lays all the information out on the table, while recognizing that the ultimate decision is the commission's about whether to move forward or not.

Mr. Boksner does not say what Mr. Gelber wants to hear, but provides the best quality of information he can. Mr. Boksner is extremely responsive. In fact, Mr. Gelber has called him on weekends and nights, and Mr. Boksner has always responded within minutes. Mr. Boksner has an excellent command of many areas of law. He has a wealth of information based on experience, but always double checks to make sure that he has not missed something. Mr. Boksner handles controversial cases, but has no controversy in his own personal life that would be a cause for concern for any employer. The commission relies on him heavily and Mr. Boksner leaving would be a significant loss for them.

Words or phrases used to describe Aleksandr Boksner:

- Sound judgement,
- Blunt,
- Respectful,
- Respected,
- Thorough, and
- Invaluable.

Strengths: He has a terrific innate knowledge of municipal law. He demonstrates independent, sound judgment. He comes from a progressive city and does not let his elected officials and managers get into trouble.

Weaknesses: None identified.

Andrea Wolfson – Circuit Court Judge, 11th Judicial Court, Miami, FL 305-548-5182

Ms. Wolfson initially met Mr. Boksner in 2001 when they were both Assistant State Attorneys assigned to the same court room. They each became Assistant Chiefs in the unit for about two full years and worked closely together. Over the years, they went their separate ways in the division and no longer work together. They have kept in touch over these years and she has followed his

**Reference Notes
Aleksandr Boksner**

career. Although they do not work closely together daily at the City of Miami Beach, Mr. Boksner's reputation has always been very good. People appreciate his analyses of legal issues. He oversees complex projects and supervises brand new lawyers. Mr. Boksner is extremely easy to work with. He is detail oriented, a hard worker, and very bright.

Mr. Boksner has a strong personality, which is needed in the court room. Although they do not work together daily, Mr. Boksner has sat in on committees with Ms. Wolfson comprised of professionals, judges, assistant state attorneys. He is also a wonderful reference for police officers. Throughout the city of Miami Beach, there have been initiatives regarding the homeless population, which Mr. Boksner has been involved in. Mr. Boksner is professional, and responsive. He has a great work ethic. No matter what it takes to get the job done, he will complete it.

Mr. Boksner maintains balance when it comes to providing solutions. While he provides solutions, he is also meticulous in following the law. He is an effective problem solver, especially in cases where they had reached an impasse and were struggling with how to protect the public, while rehabilitating an offender.

Ms. Wolfson would hire Mr. Boksner without question and knows he would make an excellent city attorney for Fort Lauderdale. Nothing controversial exists in his background that would prove embarrassing for a potential employer.

Words or phrases used to describe Aleksandr Boksner:

- Organized,
- Meticulous,
- Hard working,
- Smart,
- Easy to work with, and
- Intentional.

Strengths: He spots potential legal issues and maintains a good overall perspective. On a personal note, he is a tremendous husband and father, and very well-rounded.

Weaknesses: None identified.

Steven H. Rothstein – Deputy City Attorney, Miami Beach, FL 305-673-7470 ext. 6514

Mr. Rothstein has known Mr. Boksner since June of 2006. Mr. Rothstein is currently the deputy city attorney and works mostly on litigation matters but works directly under Mr. Boksner on the state court. Mr. Boksner supervises Mr. Rothstein and five others directly. In a word, Mr. Boksner is awesome. He really knows his stuff. One of his responsibilities was taking over the police department from Mr. Rothstein and dealing with civil forfeitures, code enforcements, etc.

**Reference Notes
Aleksandr Boksner**

Mr. Boksner was instrumental in getting the special prosecutor to prosecute behavior quality issues in their downtown corridor. He makes good decisions and good recommendations to the city commission. Sometimes it is incumbent upon him to make hard recommendations when preempted by state law. For example, the commissioners are currently addressing state preempted issues surrounding boats, mooring and gun control.

Ultimately, Mr. Boksner looks for solutions and does the best he can to represent the commission, while still seeking the community and resident's input. Mr. Boksner is well-respected, has a high value set, and is not afraid to voice his opinion. He regularly speaks at commission meetings and does well interacting with the public. Mr. Boksner has a strong knowledge base, especially involving municipal law. Mr. Rothstein hates to admit it, but feels Mr. Boksner would make a good city attorney. Mr. Boksner is timely when responding and handles difficult challenges successfully. He successfully balances a very high workload, but delegates when he needs to.

Mr. Boksner also has office management experience as evident by the fact he currently manages seven office managers, secretaries, and paralegals. Mr. Boksner went through a rigorous background check when he came to Miami Beach and no negative issues arose. Mr. Rothstein would hire Mr. Boksner without question and feels he would make a wonderful city attorney for the city of Fort Lauderdale.

Words or phrases used to describe Aleksandr Boksner:

- Humble,
- Direct,
- Conscientious,
- Detailed,
- Calm and
- Trustworthy.

Strengths: He is extremely knowledgeable and unafraid to give direct council.

Weaknesses: None identified.

Prepared by: ASHLY CLARK
Colin Baenziger & Associates

CB&A Internet Research

Internet – Newspaper Archives Searches

Aleksandr Boksner

(Articles are in reverse chronological order)

NBC News - <https://www.nbcnews.com/news/us-news/we-don-t-have-accept-carnage-towns-take-stand-gun-n887801>

July 2, 2018

'We don't have to accept the carnage': Towns take a stand on gun control

"The failure of the Congress to pass policies that keep our communities and children safe means towns feel compelled to act," a South Carolina mayor said.

Author: Jon Schuppe

Stephen Benjamin's transformation from an ordinary gun-owning Southern mayor to one who advocates limits on firearms began in the summer of 2015. That's when the Ku Klux Klan and the New Black Panther Party came to his hometown, Columbia, South Carolina, to face off over the removal of a Confederate flag from the state Capitol.

Fearing a gunbattle, Benjamin and the City Council enacted an emergency ordinance banning firearms from an area surrounding the Statehouse. The gambit worked. No one was shot.

And an idea was born.

Today, Benjamin is helping to lead a movement among municipal governments to control the possession and use of firearms within their borders. Frustrated by state and federal lawmakers' reluctance to address gun violence, local officials are taking on their lawmakers and governors, an uphill task given that all but seven states have laws prohibiting them from enacting measures that restrict the use of guns.

But their work is slowly catching on. In recent months, local governments have limited certain kinds of semi-automatic rifles, created "gun-free zones" and adopted zoning laws to keep out gun stores. Even though some of these measures have faced legal challenges, the movement's leaders say they're just getting started.

"The failure of the Congress to pass policies that keep our communities and children safe means towns feel compelled to act," Benjamin said. He considers himself in a unique position to press the issue, because he strongly supports Second Amendment rights, is a former law enforcement official and is president of the U.S. Conference of Mayors. "We don't have to accept the carnage," he said.

While states are able to pass laws that differ from the federal government's, municipalities don't have much power to act independently, said political scientist Robert Spitzer, a gun policy expert at the State University of New York at Cortland. If they did, it could lead to a patchwork of laws that change every few miles, he said. To keep towns in line, many states have passed laws to curtail local control on specific issues. These "pre-emption" laws, often pushed by industry groups, have prevented municipalities from challenging state decisions on a range of issues, from fracking bans to "sanctuary city" policies to the expansions of LGBTQ rights.

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Aleksandr Boksner

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State attempts to curb gun laws date to the 1990s, when the National Rifle Association modeled a nationwide campaign for pre-emption laws on a successful effort by the tobacco industry to rein in local smoking rules a decade earlier, according to a study by Lori Riverstone-Newell, a political science professor at Illinois State University.

Politicians from the president down are talking about new legislation and executive action after a gunman murdered seventeen people at a school in Florida. Forty-three states now have laws preventing municipal governments from passing gun regulations that go further than state ones. Six of the remaining seven — California, Connecticut, Hawaii, Massachusetts, New York and New Jersey — already have restrictive gun laws, said J. Adam Skaggs, chief counsel of the Giffords Law Center to Prevent Gun Violence.

Until recently, it's been rare for a town to defy its state government on guns. Localities typically "aren't interested in wading into the thicket, and pre-emption laws are a reason," Spitzer said.

But to Benjamin, the issue of gun violence was urgent enough to go up against the state. His decision followed the June 2015 massacre of nine black church parishioners by a white supremacist 120 miles away in Charleston, which spurred calls to remove emblems of South Carolina's racist history, in turn prompting the opposing marches in Columbia. The city's leaders knew that South Carolina's strict firearms pre-emption statute prohibited them from acting on their own to stop the demonstrators from carrying guns. But they did it anyway, because the marches would be over by the time a judge could strike the ordinance down.

“It’s painfully clear that if anything meaningful is going to happen, it's going to have to happen at the local level.” Benjamin believes that the ordinance — which was indeed invalidated, but not until after the marches — saved lives. And it got him thinking about other ways to get around state law, which curtails local governments' ability to regulate firearms and ammunition.

The next opportunity came after a gunman used semi-automatic rifles outfitted with bump stocks, which make guns deadlier by enabling them to function like automatic weapons, to kill 58 people in Las Vegas last October. While Congress and the Trump administration considered outlawing the bump stocks, Benjamin and the City Council — all but one of whose six members is a gun owner — proceeded alone, making Columbia the first city in the country to enact a bump stock ban. The ordinance, which exploited a loophole in state law that left open restrictions on such gun accessories, was aimed at inspiring other local governments "to start moving the needle toward common-sense gun laws," Benjamin said.

It seems to have worked. Several other municipalities, including Cincinnati, have implemented similar bump stock bans, and momentum on a variety of other gun restrictions has picked up since the Feb. 14 killings of 17 people at a high school in Parkland, Florida. Boulder, Colorado, for example, banned "assault weapons" in May.

"It's time for municipalities to take the lead on this, and while just the city of Boulder alone, with our 100,000 people, may not move the needle, if other municipalities follow suit and this

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Aleksandr Boksner

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becomes a national trend, that'd be really important," Boulder City Council member Jill Adler Grano said at an April meeting, according to The Daily Camera newspaper.

Gun rights groups have fought back, suing to block the ordinances. Their challenges have led judges to issue temporary injunctions against gun restrictions in Columbus, as well as in Deerfield, Illinois, which banned semi-automatic weapons like the AR-15. Similar fights are simmering in Cincinnati and Boulder.

State pre-emption laws offer a necessary "layer of protection" for law-abiding gun owners, said William Perry Pendley, president of the Mountain States Legal Foundation, which sued Boulder on behalf of local gun owners and gun-related businesses.

Boulder's actions are proof that Colorado's 2003 pre-emption law on guns "was a good idea," Pendley said.

"I can assume that it was done by the General Assembly in fear that some unit of local government would try to restrict someone's Second Amendment rights, and now, big surprise, Boulder did it," Pendley said. "Our worst fears were realized."

In addition to passing defiant gun restrictions, some towns are also beginning to target the state pre-emption laws directly. In Florida, 10 cities sued the state, saying its penalties for passing local gun laws — including removal of elected leaders from office — were unconstitutional.

That lawsuit, city officials say, could create an opening to pass local regulations.

"Attacking the penalty provision was a first step these municipalities have taken, and there will be more challenges to the pre-emption statute itself," said **Aleksandr Boksner**, chief deputy city attorney for Miami Beach. "This is nothing more than a first step."

Benjamin, the mayor of Columbia, also wants to see cities implement "gun-free school zones," which are permitted under federal law.

"It's painfully clear that if anything meaningful is going to happen," Benjamin said, "it's going to have to happen at the local level."

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Aleksandr Boksner

(Articles are in reverse chronological order)

Miami Herald, The (FL)
January 3, 2018

Tired of nuisance crimes going unpunished? Miami Beach is about to crack down

Author: Joey Flechas,

Miami Beach residents tired of seeing drunk people stumble down the street openly guzzling booze might see changes in 2018. The city wants to crack down on annoying minor crimes that nearly always end with nothing more than a slap on the wrist. Next week, a new city prosecutor will begin reviewing arrests made for violations of the city's ordinances that typically are not prosecuted by the state attorney. Depending on the case, the new attorney will have the power to go to court and prosecute people accused of crimes such as drinking in public, a violation of the city's open container law.

"The key is not to put people in jail, but to stop the behavior," said **Aleksandr Boksner**, chief deputy city attorney for Miami Beach and former Miami-Dade prosecutor.

Boksner will oversee the new city prosecutor, Yoe Lopez Jr., a young assistant city attorney who graduated from Florida State University's College of Law in 2017 and was hired by the city in October. On Monday, Lopez will begin reviewing arrests on municipal violations and determining whether they should be prosecuted.

The point of the new approach is to target repeat offenders who habitually break the city's "quality of life" laws. Public drinking is expected to be the most commonly prosecuted offense. Other frequent municipal offenses include being in public parks and on the beach after hours — dark places where police respond to crimes ranging from petty thefts to violent felonies. "There are some guys who are arrested 13 to 14 times in a year and they're not punished," said John Deutzman, a South Beach resident who moderates a private Facebook group of residents who regularly testify in bond court to encourage tougher penalties for people who are habitually arrested for misdemeanors.

Deutzman said his group is happy the municipal prosecutor will begin work next week. He anticipates this will have an impact on the amount of public drunkenness and unruly behavior associated with that, because people who are repeatedly arrested will now likely face consequences.

Police officers have discretion when making the arrests, and Police Chief Daniel Oates said the department's policy is to issue a warning to tourists who are unaware of the city's laws — they won't be a priority for prosecution. Oates described the additional threat of prosecution as a tool for cops to stop unruly behavior, particularly in the Beach's bustling entertainment district. "Do we spend a lot of time on drinking in public? No. But is it an arrest charge that helps us control abhorrent behavior? Yes," he told the Miami Herald. "We don't want to see those charges dismissed. We want to see some rigor to that prosecution."

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Officials decided they needed a city prosecutor when the police department was reviewing arrests and prosecution data for a study of the impact that body-worn cameras have on arrests and prosecutions of different categories of crime.

Department leadership realized that 98 percent of these types of municipal charges were being dropped immediately by the Miami-Dade state attorney's office — a figure that surprised Oates. "It was having an unfortunate impact on our ability to conduct that study and gather empirical evidence as to whether the body cam has any benefit in terms of preventing crime," Oates said.

Boksner estimated that about 600 to 800 municipal criminal arrests on nuisance offenses could now be prosecuted. Before, such cases would be dumped into a sea of charges processed by the state attorney's office, where municipal crimes do not have a high priority.

"Police were already taking law enforcement action," **Boksner** said. "This just puts a local individual in control of the prosecution."

Lopez will pursue only violations of municipal ordinances. If a city law is broken and there is an accompanying state charge, the case will go to the state attorney's office.

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Aleksandr Boksner
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[**CB&A Note:** We asked Mr. Boksner to comment about the incident cited below. His response follows below and precedes the article:

***Boksner Comment:** The Plaintiff initiated Federal litigation in the matter of Beach Blitz Co., dba Ocean 9 Liquor and dba as Ocean 11 Market v. City of Miami Beach, Philip Levine, Jimmy Morales, Mickey Steinberg, Ricky Arriola, Michael Greico, Joy Malakoff, Kristen Rosen Gonzalez, John Elizabeth Aleman, Raul J. Aguila and Aleksandr Boksner. The Federal District Court entered an Order on February 5, 2018, which granted the City’s Motion to Dismiss the Complaint. Count I (due process – wrongful closure), Count II (procedural due process), Count III (substantive due process), and Count V (due process – vagueness) were dismissed without prejudice and without leave to amend because the plaintiff had failed to utilize the available state law remedies before seeking relief from the Federal Court. The Court also dismissed Counts I, II, III, and V against all of the individual defendants based on absolute immunity. Counts VI and Count VII (violation of Florida Statute 562.45) were dismissed without prejudice as per plaintiff’s voluntary dismissal in its response to the City’s Motion to Dismiss. Count IV (retaliation for First Amendment expression) was dismissed without prejudice. The District Court admonished Plaintiff that an amended complaint must allege specific facts supporting its legal theory, and failure to do so will result in dismissal of the lawsuit with prejudice. The Plaintiff elected NOT to file an amended complaint, and the City is pursuing its attorneys’ fees and costs surrounding this matter.]*

RE: Miami Beach - <https://www.remiamibeach.com/south-beach/liquor-store-owner-sues-city/>
November 22, 2017

**liquor store owner sues miami beach
ocean drive**

Author: Susan Askew

The owner of two of the four package stores impacted by the reduced hours for retail alcohol sales in Miami Beach’s MXE District has filed suit against the City claiming intentional and malicious targeting of the stores. Beach Blitz, which is owned by Doron Doar, operates Ocean 9 Liquor and Ocean 11 Market. The company filed its suit on October 30, the day before the previous Commission’s final vote to restrict the hours of alcohol sales at retail establishments in the MXE to between 10 am and 8 pm. The MXE – or entertainment district – includes Ocean Drive to Washington Avenue between 5th and 15th Streets.

At the Commission meeting where the reduced hours were finalized, Doar’s attorney, Miguel Diaz de la Portilla told Commissioners they were targeting “family-owned businesses”. “The ordinance ostensibly seeks to address an underlying crime problem. We’re here to tell you that we agree that there is a crime problem in South Beach but we don’t think South Beach’s problem is a package liquor store problem.” Rather than address crime, he said, the ordinance “discriminatorily scapegoats and singles out, again these four family-owned small businesses in South Beach. Our clients would like to be part of the solution. We’d like to help the City deal with the underlying crime problem. But this is not the way to do it.”

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John Deutzman, one of the founders of the Miami Beach Crime Prevention and Awareness Group was having none of it. “I’ve been studying the crime situation on South Beach for more than a year personally and our group has been at it since July,” he told Commissioners. “And I will tell you without hesitation that the problems in Lummus Park, in that area, start when the liquor stores open and they end when they close. Almost all of our dayside problems are disorderly intoxication and harassment of tourists by people who are drunk out of their minds and I’m not going to mention any names but one place, in particular, willingly sells to these known drunks and alcoholics to the demise of the community and to the demise of these people. We’ve had 15 people die in our community of alcohol problems, so the notion that they’re being fine citizens and we’re ruining their fine family business is wrong.”

The suit alleges the City “peppered those stores with improper code enforcement violations, intentional police blockades restricting access to certain of those stores, and most recently an egregious forced closing of one of those stores, Plaintiff’s Ocean 9 Liquor, without due process.”

According to the filing in U.S. District Court, “The cessation of operations by Ocean 9 Liquor was accomplished by overt threat by two Miami Beach police officers and one code enforcement officer, to place the owner of the store in jail if he did not voluntarily close his store because of an alleged dispute over a several hundred dollar Business Tax Receipt (“BTR”), otherwise known as an occupational license fee.” The store was closed and remains closed.

The suit claims, “Over 15 employees are left without jobs and the City has no defense or excuse other than Ocean 9 Liquor was allegedly a few months delinquent in paying a few hundred dollar occupational license fee” which the suit states the City prevented from being paid due a violation pending a special master ruling. Once the violation was resolved, the suit claims Doar tried to renew his license but “was physically prevented from obtaining a BTR until he was threatened with jail if he did not close the store at 865 Collins Ave on Friday, October 6, 2017.”

Closing the business, the suit says amounts to “an improper taking without due process”. It seeks redress for what the suit calls “the City’s wrongful and unconstitutional closing of one of Plaintiff’s locations” and asks the Court “to declare invalid and enjoin the City’s arbitrary, capricious and unreasonable ordinances designed to bankrupt the four package stores in the MXE district.”

“Regulation of the sale of alcoholic beverages is a legitimate legislative province,” according to the claim, “so long as any such ordinance is not arbitrary or capricious and is reasonable in the context of its implementation and effect.”

The suit specifically calls out former “Mayor [Philip] Levine’s overzealous campaign” for the ballot initiative to reduce the hours of alcohol sales at outdoor entertainment establishments on Ocean Drive and his characterization of “certain businesses on South Beach that sell liquor ‘malignant tumors’” as showing “malicious intent”.

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“The City apparently concluded that the consumption of open containers of alcoholic beverages in public places disturbs the quiet enjoyment of the community, causes undesirable noise, and contributes to litter, noxious odors, and the general degradation of the City,” according to the filing. “There is no direct finding that the four package stores in the MXE district are a causal link to any crime in that district. Nor is there actual support that eliminating one or such packages stores will improve the crime problem.”

Previously, the City Commission passed an ordinance to prohibit new package stores in the MXE, grandfathering in the four existing stores. Commissioners then reduced the sale hours several times before settling on the 10 am to 8 pm time period in the most recent action. The suit claims, the Commission’s actions amounted to a “systematic passage of a series of overreaching, unreasonable ordinances designed to bankrupt the four package stores by systematically reducing their legal hours of sale. In less than a year, the proposed reduction will be a reduction from a 16 hour period to a 10 hour period. Most hours being eliminated are at peak sale time.” The suit claims the result will be “a likely reduction in revenue of approximately 50%.”

Regarding the closing of Ocean 9 Liquors, the suit alleges, “The City has intentionally, unilaterally and arbitrarily refused to renew Plaintiff’s BTR license for its store at 865 Collins Avenue, despite accepting and retaining all fees relative to same.” Because of the Commission’s earlier action to prohibit new package stores, the suit says the City has refused to renew Ocean 9’s lapsed license as its “‘new’ proposed use as a package store is a non-conforming use” meaning no longer allowed under City Code. “The trap is sprung,” the suit claims. “One store down; three to go.”

“The City intentionally prevented Plaintiff from updating his license yet now says that because Plaintiff didn’t timely update its license it is barred from future operation. Those actions are not only unlawful and in bad faith, they are unconstitutional on their face,” according to the filing.

“Clearly, the City dithered on allowing Plaintiff to renew his BTR for fiscal year 2016-2017 to get past the date necessary to spring its trap,” according to the suit.

A sign on the door at Ocean 9 says the store is “closed for inventory”.

The suit also names former Mayor Philip Levine, City Manager Jimmy Morales, Commissioners Micky Steinberg, Ricky Arriola, John Alemán, Kristen Rosen Gonzalez, former Commissioners Michael Grieco and Joy Malakoff, and City attorneys Raul Aguila and Chief Deputy City Attorney **Aleksandr Boksner** as individuals. A City spokeswoman says the City does not comment on pending litigation.

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Aleksandr Boksner

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Broward Bulldog (FL)

October 6, 2017

Without admitting wrongdoing, Miami Beach settles Taser death of teen street artist

Author: Francisco Alvarado

Miami Beach officials have settled a wrongful death lawsuit brought by the family of Israel Hernandez-Llach, the 18-year-old street artist who died on Aug. 6, 2013 after he was shot in the chest with a Taser fired by a city cop who was chasing him for scrawling graffiti on a wall.

The teen's death generated national media coverage regarding the use of Tasers by police in handling suspects and intense scrutiny of the Miami Beach Police Department, which two years earlier had faced widespread criticism over the shooting death of a suspect and the wounding of four bystanders on Memorial Day Weekend in 2011.

Within weeks of Hernandez-Llach's death, his parents and sister sued the city, alleging Miami Beach cops used "wrongful, unnecessary and unreasonable force" to detain the young man and then failed to provide him with proper medical care when he showed signs of distress.

According to court affidavits releasing the city and the police officers involved in the incident from any claims, Miami Beach officials expressly deny liability, but agreed to pay \$100,000 to Hernandez-Llach's father, Israel Hernandez Bandera, his mother Jacqueline Luz Llach and his sister Offir Hernandez Llach. Florida Bulldog obtained the affidavits, signed by the three surviving relatives on Aug. 3, last week through a public records request.

"The City of Miami Beach made the decision to resolve this lawsuit," said deputy city attorney **Aleksandr Boksner**. "We believed this to be the best course of action in this matter." Under Florida's sovereign immunity law, governmental agencies are only required to pay up to \$200,000 to the families of individuals injured or killed by municipal negligence.

Todd Falzone, a Fort Lauderdale attorney representing Hernandez-Llach's family, did not return three phone messages seeking comment. Hernandez Bandera, who divorced Llach in 2009, said that he, his ex-wife and their daughter decided to settle after determining it would have cost them more money to take the case to trial than any amount they would be entitled to had they prevailed. He also said the family did not want to go through the pain of putting the officers on the stand so they could continue to give misleading statements about their role in killing Hernandez-Llach. "We made the decision to turn the page," Hernandez Bandera said. "But we have not given up our fight to expose the truth about what happened to my son."

The day he died, more than half a dozen Beach cops began pursuing Hernandez-Llach after spotting him writing his street name, "Reefa," on the wall of a shuttered McDonald's restaurant on the corner of 71st Street and Collins Avenue. When they caught up to the 18-year-old, officer Jorge Mercado Tasered Hernandez-Llach, shocking him in the chest, according to the complaint.

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(Articles are in reverse chronological order)

"While he was lying on the ground, injured and in need of emergency medical treatment, the officers were seen celebrating, including 'high-fiving' one another," the complaint states. Mercado denied the accusation in a sworn statement he gave as part of internal affairs and criminal probe of Hernandez-Llach's death.

To draw attention to police brutality and misconduct, his family organized numerous vigils and protests, and also submitted a report to the United Nations Committee Against Torture. "We won't stop until there is an independent investigation into the circumstances of Israel's death," Hernandez Bandera said. "It is something we have been pushing for since he was killed."

In 2014, the Miami-Dade Medical Examiner's Office released its findings that Hernandez-Llach died from "sudden cardiac arrest" caused by the Taser's electric discharge. But the medical examiner stopped short of ruling his death a homicide, determining it was accidental.

In July of the following year, Miami-Dade County State Attorney Katherine Fernandez Rundle announced that no criminal charges would be filed against the officers who detained Hernandez-Llach. "Our extensive investigation determined that the sad tragedy of this situation is that no one involved intended or anticipated any serious injury occurring to this young man," she said at the time. "In my meeting with the family, I expressed my heartfelt sorrow for the unimaginable loss of their son."

Since then, the legal team representing Hernandez-Llach's family has been collecting evidence and taking officers' depositions to build a strong case against the city, including street surveillance video footage that shows Mercado and another officer chasing the street artist with their guns drawn, according to a Dec. 16, 2016 Miami New Times story. Hernandez Bandera said there was no reason justifying police pulling out their firearms on a kid tagging a building.

Now that the lawsuit is settled, Hernandez Bandera said the family will be releasing video, along with depositions by Mercado and other officers, that contradict sworn statements they provided to homicide investigators, in addition to other proof that he says shows a cover-up.

"Little by little, we will be revealing the truth," he said. "We will continue fighting for Israel so that another family doesn't have to go through what we have been through."

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Aleksandr Boksner

(Articles are in reverse chronological order)

Miami Herald, The (FL)
October 18, 2016

Are politicians' social media accounts public record? One man is suing to find out

Author: Joey Flechas

A social media kerfuffle between a local radio host and Miami Beach Mayor Philip Levine has turned into a legal dispute over what social media posts are deemed public under Florida's sunshine laws. Mortgage broker Grant Stern, a vocal critic of Levine, is suing the mayor and City Hall over access to the list of people Levine has blocked on his Facebook page and satellite radio broadcasts he's done on Sirius/XM.

Stern, who is also a radio broadcaster, has filed suit in circuit court to force Levine to disclose the blocked Facebook accounts; audio recordings of "The Mayor," a Sirius/XM show Levine hosts; and a month's worth of Twitter posts (tweets). The suit raises the question of whether an elected official's posts to social media accounts — personal accounts where they publish official city business — count as public records under the state law.

If personal email accounts and cellphones of elected officials are subject to sunshine laws, then social media posts would also be public, according to Daniel Bevarly, interim executive director of the National Freedom of Information Coalition. "If he's discussing public business under that as the mayor, then those tweets would be public," Bevarly said. "Same thing on the Facebook page, even if it's a personal Facebook page."

Bevarly said he wasn't aware of any precedent regarding the disclosure of blocked accounts. And while he believes the Sirius/XM shows are public if Levine discusses official Miami Beach business on them, he's not sure how a court might treat outtakes from those shows. "It'll be interesting to see if [Stern] gets that information," he said.

According to a 2009 legal opinion from then-Florida Attorney General Bill McCollum regarding a question about an official Facebook page of the city of Coral Springs, posts on official municipal pages that deal with official city business are public records. The city of Miami Beach and its fire and police departments are very active on Facebook, Twitter and Instagram, and they all routinely post information for residents regarding public works projects, traffic and public safety.

Levine has a Facebook page and Twitter account where he identifies himself as the mayor of the Beach and where he posts about official city business, links to news articles and political support for Democratic presidential candidate Hillary Clinton.

Stern has criticized Levine over concerns that the city's stormwater system is pumping polluted water into Biscayne Bay. In July, Stern responded to a tweet Levine sent out that includes him, Clinton and her running mate, Tim Kaine, stating: @MayorLevine hope that @HillaryClinton

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Aleksandr Boksner

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@timkaine advised you to fix the #MiamiBeach water pollution problem you caused." Stern said Levine then blocked him.

After that, Stern said he requested past tweets directly from Levine in a comment on the mayor's Facebook page. Levine then deleted the comment and blocked Stern on that platform as well. Stern then made formal records requests from City Hall. A city attorney responded that the block list and the Sirius/XM recording are not public records.

On Tuesday, Stern was confident he has a good chance at winning the suit. "There's no reason for them to deny us these records," he said.

Levine declined to comment on the matter because of pending litigation. So did **Aleksandr Boksner**, senior assistant city attorney, who said City Hall had not been served with the lawsuit yet. "The city of Miami Beach has not been served with the lawsuit, but irrespectively, does not provide comments on litigation that is actively pending," he said in a statement.

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Aleksandr Boksner

(Articles are in reverse chronological order)

[**CB&A Note:** We asked Mr. Boksner to comment about the incident cited below. His response follows below and precedes the article:

Boksner Comment: *The Plaintiffs filed a Complaint against the City of Miami Beach and the City of Hialeah, which alleged causes of action solely founded upon the failure to disclose public records pursuant to the Florida Public Records Act. The City of Miami Beach served its Answer to the Complaint, which asserted the active criminal investigative exemption set forth in Section 119.071(2)(c)1 of the Florida Statutes. The Court ruled in favor of the City of Miami Beach, and recognized the a properly asserted active criminal investigation exemption existed, which criminal investigation was being conducted in good faith by the Miami Beach Police Department. However, the Court did conclude that the “families” were entitled to “autopsy reports, autopsy results, any audio and/or visual recordings that took place shortly before, during or after the shooting, including 911 calls and dispatches and any other video recordings that may have been found on You Tube.” The Court neither stated nor asserted that photograph(s) were to be included within the materials to be provided, and Section 406.136 of the Florida Statutes pertains to the existence of video recordings. The Court clarified the initial ruling, and the City of Miami Beach sought appellate review of this matter. The City has not paid any attorneys’ fees for this matter (nor has it been required to pay), and the newspaper article contains substantial errors and omissions surrounding the litigation.]*

Miami Herald - <https://www.miamiherald.com/news/local/community/miami-dade/article1952592.html>

June 18, 2013

Miami Beach must pay attorneys’ fees in Urban Beach Week shooting

Author: JULIE K. BROWN

The city of Miami Beach was ordered Tuesday to pay legal costs for violating a court order requiring it to turn over documents, photographs and recordings in connection to a fatal police-involved shooting on Memorial Day 2011.

Miami-Dade Circuit Court Judge Victoria Sigler stopped short of sanctioning the city’s attorneys, but raised her voice and thoroughly scolded them for using excuses to explain away their missteps. Your behavior, she said, is “darn right insulting to the court,” she said, to the amusement of a packed courtroom. She used a few other choice words, spicing up what would have otherwise have been a pretty mundane hearing – except during this one a pair of Miami Beach’s high-powered attorneys were dressed down in front of a roomful of aspiring University of Miami law students.

Under Tuesday’s ruling, the city must pay legal fees incurred by the four attorneys who were forced to return to court because the city did not turn over information the judge ordered two months ago. The fees are likely to cost Miami Beach thousands of dollars. But the snafu may cost more than money, as questions about the integrity of the investigation continue to dog a police department that has lost credibility after years of scandal.

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Aleksandr Boksner

(Articles are in reverse chronological order)

In the Memorial Day weekend shooting two years ago, lawyers for Raymond Herisse, 22, the motorist who was killed and the four bystanders critically wounded have sued the city, contending Miami Beach has dragged on the investigation for two years so police can withhold, cover-up or destroy evidence to make the city less liable for its negligence and the actions of the officers. One dozen officers – eight from Miami Beach and four from Hialeah – fired more than 116 shots at an erratic motorist during the busy Urban Beach hip-hop festival, killing him and wounding the four tourists. The case has been turned over to the Miami-Dade State Attorney's Office, which will decide whether to charge the officers.

Thus far, Miami Beach has yet to produce any evidence to show that Herisse was a threat to anyone, which is, by law, the only reason police can use lethal force. In this case, he was not armed and police did not find a gun until three days later, wrapped in towel tucked under the seat of his car.

Miami Beach Police managed to keep almost everything about the case under wraps until April 3, when Sigler ordered them to release certain items to Herisse's family. But the city's attorneys gave conflicting information about what evidence officials had and whether they believed it was part of the judge's order.

At Tuesday's hearing, Sigler clearly took umbrage with Miami Beach attorneys' effort to parse her words.

Assistant Miami Beach City Attorney **Aleksandr Boksner** insisted, for example, that the city wasn't required to turn over photographs because her order used the words "visual recordings."

"You neglected to turn over any photo of Mr. Herisse as well as any crime scene photographs of Mr. Herisse," she said. "You don't stand there in front of me and tell me that a photo is not a visual recording." She also was perturbed that last week, **Boksner** told her crime scene photographs of Herisse's body were taken, yet on Tuesday he claimed those photographs did not exist.

She ordered him to obtain a certified affidavit from the lead detective saying that the photographs didn't exist. If true, that raises another whole set of problems with the investigation, according to Herisse's family lawyer, Marwan Porter. "We don't know what to believe, but what kind of an investigation can they be running if they don't even take photographs of the body at the crime scene?"

In an effort to dissuade Sigler from punishing the city, **Boksner's** boss, Chief Deputy City Attorney Donald M. Papy, weighed in at the end. He claimed that Police Chief Raymond Martinez did not turn the police dispatch recordings into his office – which is why, Papy said, he did not give them over to the attorneys.

Sigler was unmoved, saying it was his duty to carry out her order.

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Aleksandr Boksner
(Articles are in reverse chronological order)

Miami Herald, The (FL)
June 12, 2013

Miami Beach may be punished for stonewalling in Urban Beach shooting

Author: JULIE K. BROWN

A Miami-Dade Circuit Court Judge is considering whether to levy legal sanctions against Miami Beach for failing to comply with a court order to turn over evidence in connection with the fatal police shooting of a motorist during Urban Beach weekend two years ago. The investigation, which Miami Beach Police recently completed and turned over to the state attorney's office, has been dogged by controversy from the outset.

One dozen police officers – eight from Miami Beach and four from Hialeah – fired more than 116 shots at the motorist during a busy street festival, killing the motorist and seriously wounding four innocent bystanders.

Lawyers for the motorist and the bystanders have sued the city, contending Miami Beach has dragged the investigation on for two years to withhold, cover-up or destroy evidence to make the city less liable for its negligence and the criminal actions of the officers.

At a Wednesday hearing, Assistant City Attorney **Aleksandr Boksner** admitted the city has destroyed police dispatch communications recorded in the minutes and hours before the incident unfolded.

And Circuit Judge Victoria Sigler was clearly annoyed that **Boksner** didn't seem to know what he had and had not given the plaintiff's attorneys as required under her order. "So you're telling me you had them just dropped on your desk and sent them off?" Sigler asked. "You didn't review the materials?"

At issue is what could arguably be the most crucial piece of evidence in the case – the officer-to-officer chatter during the shootings of 22-year-old Raymond Herisse and the four tourists. The recordings during May 30, 2011 may shed light on precisely what led police to use lethal force and whether it was justified. By law, lethal force can only be used to protect the lives of officers or others.

In this case, Miami Beach police initially indicated they believed that Herisse had a gun. But after the smoke cleared, no gun was found on his body. Three days later, police announced they had found a gun wrapped in a towel under the seat of his car. Tests later showed Herisse did not fire a weapon.

Police also said they felt he posed a threat to officers because they had to jump out of the way of his speeding vehicle, which they said rammed into parked vehicles, barricades and their bicycles. But a video taken by a witness appears to show Herisse's car was not traveling at a high speed before it lurched to a stop, was surrounded by officers and moments later, pumped with shots

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Aleksandr Boksner

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from their semi-automatic weapons. In all, Herisse was shot 16 times, according to the autopsy report.

Frustrated by delays, family members, wounded bystanders and their lawyers filed a public records lawsuit last year demanding that Miami Beach turn over information so that the victims can pay their medical expenses and recover their loss of wages. Miami Beach police responded that, by law, they could keep the evidence secret because the investigation is not yet complete.

In April, Sigler ordered Miami Beach to release to Herisse’s family and to the bystanders’ attorneys “all autopsy reports, autopsy results and any audio and/or visual recordings that took place shortly before, during or after the shooting, including 911 calls and dispatches ...” Six weeks later, the city has yet to turn over photographs of the body at the crime scene, 911 calls made prior to the shootings as well as any police officer communications.

Boksner initially claimed the police tapes didn’t exist, then said he provided everything he had – then said he didn’t believe he had to turn them over, and finally said he did turn them over.

The confusion in the court prompted Miami Beach Police Chief Ray Martinez to bypass **Boksner** and send the tapes directly to Marwan Porter, one of the plaintiff’s attorneys.

Martinez told The Herald at the time that he was sending them to the attorneys himself because he was concerned about violating the judge’s order.

Porter, who represents Herisse’s mother, turned over the envelope purportedly containing the police tapes to Sigler on Wednesday. She will compare what’s in the envelope to what **Boksner** sent to the attorneys. She said she plans to rule next week on whether the city should be sanctioned.

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Aleksandr Boksner

(Articles are in reverse chronological order)

<http://www.authorsden.com/visit/viewnews.asp?id=41081>

April 06, 2013

Judge Judy and Miami Beach Magistrate Babak Movahedi

Author: David Arthur Walters

City of Miami Beach officials have discounted or written off what is believed to be millions of dollars in fees and fines over the last few years. The exact amount has not been ascertained because the city does not regularly account for the uncollected funds as required by the generally accepted accounting principle that activities which have a material impact on an entity's finances should be regularly accounted for and reported.

Law enforcement officials were interested in what David Weston, a former fire inspector, had to say about building permit fee discounts and uncharged permit fees. Weston believes he was fired on the pretext of trumped up ethics charges for reporting and insisting on the collection of what he called "missing monies" allegedly amounting to millions of dollars. However, no charges were brought against any officials because it was determined that they have the discretion to reduce or not collect building permit fees under the general authority of the city manager, and that such largesse is not technically a crime even when corruption is suspected.

A controversy erupted in the summer of 2012 between the city attorney and special masters, quasi-judicial magistrates responsible for hearing certain code and ordinance violation cases to assess fines that they may "mitigate" or reduce if violators meet certain criteria for writeoff or reduction. For example, if violators have done their best to promptly make the corrections needed to conform to the law, then there is considerable wiggle-room for mitigation because the emphasis may be on getting violators to comply rather than punishing them harshly for infractions. The seriousness of the violation may also be considered, and whether or not the fine would be excessive in relationship to the value of equity in the property.

One reason that the state legislature provided authority for municipalities to set up code enforcement boards or, in the alternative, a "special magistrate" system, was to provide local discretion over code and ordinance fines at less expense than could be had in the regular courts. The boards, whose magistrates do not have to be attorneys licensed by the State of Florida, were conceived of as "citizens' boards" independent of the will of municipal administrators.

City Attorney Jose Smith was careful to deny that he wanted to control the special master facility, which, he said, is not a real court but is rather a creature of the city commission that can be abolished by the commission. Nevertheless, he wanted the commission to replace chief special master Abraham Laeser with special master Enrique Zamora, who was expected, in turn, to retain Laeser as a lesser special master but to fire and replace subordinate special masters Babak Movahedi and Joe Kaplan.

It was alleged that Kaplan was becoming forgetful with age, and that Kaplan was not moving cases along quickly enough. Movahedi, on the other hand, had become a thorn in the side of the

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Aleksandr Boksner

(Articles are in reverse chronological order)

city attorney over what appeared to be a choleric personality clash with his assistant, **Aleksandr Boksner**, a clash that Mayor Matti Bower likened to sibling rivalry. The substance of the issue, however, appeared to be control over the assessment of fines and their mitigation.

Boksner, a graduate of the Toledo College of Law and licensed to practice in Florida, objected that Movahedi did not have a Florida license, and implied that he was incompetent. Movahedi obtained his JD and LLM degrees from Georgetown University, and practiced international law in the District of Columbia before moving to Miami Beach

Movahedi soon obtained a reputation of being a Judge Judy special master, a no-nonsense magistrate who would not tolerate such excuses as, “I did not comply with your order because someone down the hall said the law does not apply to me.” Or, “I was residing at my home on the Riviera at the time and was unaware of the violations at my South Beach residence.”

That is not to say, however, that Movahedi is a so-called hanging judge. **Boksner** took him to task for applying a principle of equity called equitable estoppel. To wit: a government can be stopped from penalizing someone who relies on its word or conduct that there would be no penalty in that situation. To do otherwise would be inequitable or unfair. An information sheet handed out to persons cited for violations, entitled ‘Notice to Violators—Late Compliance,’ states that the special master may make judgments in law or equity, meaning that s/he can override the strict provisions of law if executing it would be unfair or unjust.

For example, Movahedi had a case before him involving the purchase of property with the understanding that the city had allowed or would allow parking on the property, but the city did an about face after the property was purchased and went after the new owner. Movahedi asked a city attorney for pertinent case law on the subject, was presented with same, and then stopped the city from making good on its claim. That ruling rankled Mr. Smith, who stated in a June 12 email that “This ruling is erroneous and must be appealed forthwith. The notion of ‘equitable estoppel’ is JUDICIAL remedy, and not the purview of a Special Master. There is either a violation or not. The Special Master exceeded his authority. Abe, I’ve had enough of this nonsense!” But the ruling was not appealed.

Movahedi insists that he is duty bound to apply the law to the facts. But **Boksner** said he should apply the facts to the law, an assertion that may imply that Movahedi casuistically stretches the law to fit the facts rather than making sure the facts fit the law as it is strictly constructed. Smith refused to allow **Boksner** to explain his statement on the grounds that an explanation would be tantamount to providing legal advice to the journalist making the inquiry.

Most saliently, Movahedi, in his application of the law, has refused to recognize any settlements or mitigations of fines by the city attorney, or others under the authority of the city manager, prior to the rendering of his judgments. For example, a violator may state that he has agreed to pay, say, \$2,500 instead of \$25,000, and an assistant city attorney present at the hearing might not objection to the settlement. When asked with exactly whom the agreement was made, some

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lesser official might be referred to, someone having authority from the city manager to make deals.

Movahedi leans forward agitatedly and his voice hits soprano notes when he is confronted with deals that challenge his authority to apply the law to the facts. His demeanor terrified a lawyer or two, wherefore a formal investigation was conducted, and his alleged courtly misdemeanor was written off as a misunderstood ethnic or cultural artifact. In any case, he insists that it is up to the special master to assess the fine and mitigate it if mitigation is warranted by the situation. Then and only then may the city make some other arrangement with the violator pursuant to the resolution personally drafted by City Attorney Smith for the commission, to the effect that the city manager may reduce or write off fines less than \$100,000, and the commission may do so if the fine is over that amount. In practice, a financial analyst for the city manager approves of the lesser write-offs, apparently at the bidding of the city attorney, whose advice on the larger amounts is considered by the commission.

Naturally members of the community who disagree with the fines imposed are inclined to blame the special masters either for going too hard on or too easy on violators. For example, annoyed residents were up in arms over a deal allegedly struck with a large event organizer to reduce a noise code violation fine. Suffice it to say that public pressure could be employed to manipulate the commission to place virtually absolute control over the ideally independent special master process in the hands of the city manager and/or city attorney.

It is difficult if not impossible to hold officials accountable for writeoffs and reductions that could run into untold millions of dollars over time and become a honey pot for corruption. When City Clerk Rafael Granado was unable to provide an accounting of the writeoffs and reductions, a proposal was submitted to Interim City Manager Kathie Brooks, City Attorney Jose Smith, and Commissioners Ed Tobin and Deede Weithorn, to regularly account for and report mitigations, writeoffs, reductions and the like by means of a paper or electronic “warrant” signed by the person actually authorizing them. In special master cases, that would be the particular special master, or the city manager, or the city clerk on behalf of the commission. And why not use that principle with all reductions including reduction in permit fees, waivers of double permit fee penalties, and the like? The gross amount would be entered on the warrant form along with the reduction, the reason for the reduction would be given, and the form would be signed by the authorized person, and then initialed by his or her superior. The net amounts collected would of course reconcile to cash under the city’s modified cash basis accounting methodology.

Commissioners Tobin and Weithorn did not respond to the proposal. Smith said the proposal was “moronic,” that there was no question of “blame,” and that he simply believed in “following the law.” No blame, no responsibility. Brooks declined to have the reductions accounted for, preferring to refer the matter to Crowe Horwath, LLC, an outside consultant auditing city systems and processes. Crowe Horwath was offered information on the subject, but spokesperson Jan Lippmann declined to receive unsolicited information or to answer questions as a matter of policy: its information is limited to that supplied by city officials.

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Aleksandr Boksner

(Articles are in reverse chronological order)

Brooks did not comment on the frequent deference of the administration to the opinions and proposals of outside consultants at considerable cost to the city, the notion that the city is literally outsourcing crucial aspects of governance such as data collection, analysis, recommendation, planning, et cetera, instead of resorting to self-reliance on internal resources that should be competent to address the issues, and on serious consideration of input from residents and businesses who are often outraged by the alleged negligence and laziness of some officials. Commission Weithorn, when discussing another matter, did voice her dismay over the fact that business as usual continues despite outside consultations and recommendations.

Brooks, who was a top administrator under the former city manager, Jorge Gonzalez, has been an outspoken advocate of transparency since Gonzalez was involuntarily retired in the wake of several F.B.I. arrests of city employees, but ‘transparency’ is often no more than a word. City Clerk Granado, responding to the rumor that the opaque special master information system was a relic from the Stone Age, and that “records are being kept on bear skins,” said that the system was being upgraded. He did not respond by deadline to the suggestion that special master hearings be videotaped live and broadcasted like commission hearings. No doubt the public would be as edified and entertained as they are by Judge Judy.

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Aleksandr Boksner

(Articles are in reverse chronological order)

[**CB&A Note:** We asked Mr. Boksner to comment about the incident cited below. His response follows below and precedes the article:

Boksner Comment: *The former City Attorney (Jose Smith) was directly responsible for the various issues and concerns that existed surrounding the conduct of the City’s Special Masters. The City’s Special Masters were notified that there are express legal requirements of the Local Government Code Enforcement Boards Act, which specifically set forth, and identify their legal authority in code enforcement proceedings initiated pursuant to Florida law. Regrettably, the Special Masters continued to handle code enforcement hearings like civil actions (exceeding their statutory authority), which was neither recognized nor acknowledged under the requirements of Florida law. Subsequently, the City sought appellate relief that encompassed the behavior of the City’s special masters, and the Court agreeing with the City; issued rulings holding that the special masters had exceeded their statutory legal authority. In response, the Mayor and City Commission declined to permit these individuals from further serving as special masters for the City of Miami Beach.]*

<https://www.scribd.com/document/104306442/Showdown-at-High-Noon-Miami-Beach-City-Attorneys-v-Special-Masters>

September 6, 2012

MIAMI MIRROR – TRUE REFLECTIONS

SHOWDOWN AT HIGH NOON

Miami Beach City Attorneys versus Special Masters

Author: David Arthur Walters

Hatfield and McCoy trial was really not about the pig, but was about the relative dignity and honor of the feuding families that wanted justice, i.e. vengeance. They were divided by Big Fork, a tributary of the Big Sandy River. This reporter can certainly understand Irish ire since he is remotely related to the Hatfields, not to mention kings and traitors. The city attorneys and special masters were divided by the conference table instead of a creek, and they had more than one pretextual pig. The pigs in the poke were named Statute of Limitations, Discovery, Ordering Inspections, and Equitable Estoppel. Someone mentioned that a special master had ruled that the city should not be able to take current action on a violation that had occurred many years ago unless that violation put the public in danger. Even worse, Judge Movahedi believed that due process should allow a defendant to discover whatever information the city might have that would help his case.

But the law implementing the special master agency states that the Florida Rules of Civil Procedure governing discovery did not apply to it—yet the statute was silent on what sort of discovery could be ordered by the quasi-judicial agency. Assistant City Attorney Rhonda Montoya Hasan sympathized with the judge’s wish for adequate due process, but the means to it remained a point of contention. She suggested making public records requests. Ms. Montoya Hasan, incidentally, has been practicing law with the city since 1997. She holds a BA degree from Duke University and received her JD from the University of Miami in 1996. Furthermore,

Internet – Newspaper Archives Searches**Aleksandr Boksner***(Articles are in reverse chronological order)*

Mr. Movahedi had dared to “order” an inspection of structural damage to see if it endangered the public, when he should have merely “requested” it because he had no state statutory authority to order a building inspector to do anything at all.

However, although the transcript did have Mr. Movahedi “ordering” an inspection, his order was really a “request,” as we can see from John Austin’s Lectures on Jurisprudence, which aptly drew the semantical difference between an order and a request long ago: “A command is distinguished from other significations of desire, not by the style in which the desire is signified, but by the power and the purpose of the party commanding to inflict an evil or pain in case the desire be disregarded. If you cannot or will not harm me in case I comply not with your wish, the expression of your wish is not a command, although you utter your wish in imperative phrase. “Equitable Estoppel was the fattest of all the rather bony pigs in the poke. A government can be stopped from penalizing someone who relies on its word or conduct that there would be no penalty in that situation. To do otherwise would be inequitable or unfair. There are several received forms of equity. The classic example of the difference between law and equity was given by Blackstone: the law states that the last man on board a capsized vessel had salvage rights, but if the man was last because he was asleep in his bunk, he should not have those rights. There used to be separate equity courts, but now courts can consider equitable principles as well as the strict law. The city’s Notice to Violators – Late Compliance ‘instructions state that “Legal or Equitable reasons” may be presented in the Special Master court.

Judge Movahedi had a case before him involving the purchase of property with the understanding that the city had allowed or would allow parking on the property, but the city apparently did an about face after the property was purchased and went after the new owner. Judge Movahedi asked a city attorney for pertinent case law on the subject, was presented with same, and then stopped the city from making good on its claim. That ruling rankled Mr. Smith, who stated in a June 12 email that “This ruling is erroneous and must be appealed forthwith. The notion of ‘equitable estoppel’ is JUDICIAL remedy, and not the purview of a Special Master. There is either a violation or not. The Special Master exceeded his authority. Abe, I’ve had enough of this nonsense! “To the best of our knowledge at press time, the judge’s estoppel ruling was not appealed despite the continued insistence that it was illegal. As far as the city attorney and his staff are concerned, code enforcement tribunals are not even a court although we noticed a higher court referring to them as trial courts. Questions of equity, the city attorneys believe, can only be decided on appeal to a real court, in this situation a circuit court.

Again, Mr., Smith insists that “special masters are neither judges nor magistrates.” The special masters doubtless disagree despite their “quasi-judicial” status and feel their tribunal should be independent of the executive and legislature to a certain extent. In response to further inquiry, Mr. Smith acknowledged that the special master ordinance can be repealed without referendum and the city be rid of the special master agency forever. We recall President Jefferson’s effort to smother the fledgling Supreme Court in its crib, conspiring to impeach judges for political reasons, although there was admittedly afoot mental infirmities, judicial errors, and moral turpitude, including a great deal of liquor to boot.

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Aleksandr Boksner

(Articles are in reverse chronological order)

Of course, an analogy with the special master court would fail here if it is unconstitutional. Given that there are two sides to this ongoing feud, one might wonder why the Commission should not consider replacing the city attorney and his staff instead of the special masters. It appears that the case presented to the commissioners was stacked against the special masters. The little “book” of complaints that the city attorney threw at the special masters included a letter from an attorney, Martin Wasserman, lauding him as “an honorable, excellent attorney and leader of our legal department,” with “a keen sense of direction that is in the best interests of the city. “And, he said that Mr. Zamora, the city attorney’s choice for chief special master, “is an excellent attorney, very highly regarded by the Probate Judges, and would be a credit to the City.”

Mr. Smith included another letter from an attorney, one Raul Morales, who said that he had attended his first hearing before Mr. Movahedi, where he discovered that he lacked professionalism, common courtesy, respect, and class, that he was aggressive, condescending, and downright rude, noting that he did not even have a license to practice law in Florida. A subsequent investigation that included listening to the recording of the hearing found that “there is no discernible evidence of any change of vocal tone, argumentative speech, or inflections reflecting any improper disagreement.” In fact, there was “no indication of bad feelings between any persons.” Mr. Morales “admitted that no bad language or insulting words were used.”

In fine, Mr. Morales, who regretted that his complaint had resulted in a formal investigation, had regretfully misjudged the judge’s mannerisms, his rapid speech, his way of leaning forward, and the like. Although ethnic differences and cultural values are being discussed as a legitimate concern during the current presidential campaign, we might risk being politically incorrect to say that Babak Movahedi was misperceived because of his energetic temperament, partly due to his physiognomy, as well as his cultural background, which includes hatred for grand ayatollah lawyers, and compare his temper to the stereotypically fiery Latin temper, and the stereotypical aloofness of Jewish intellectuals. We certainly do not wish to aggravate the bad blood and groundless hatred of the human race itself here with an elaboration of the issues including original sin and the conduct of Abel and Cain.

MS. Montoya-Hasan said the situation had become so troubling that certain cases were being reassigned to other special masters. Of course, selecting compatible judges is nothing new to the legal profession. Movahedi was most incensed by a statement that **Mr. Boksner** had made in open court, to the effect that he had no right to interpret Florida law because he did not even have a license to practice in this state. **Mr. Boksner** replied that he was simply making the objection as a ground for appeal. Furthermore, he did not appreciate Mr. Movahedi acting like a circuit court judge. “The special master is supposed to apply the facts to the law,” **Mr. Boksner** said. “My job is to apply the law to the facts,” Mr. Movahedi retorted.

Commissioner Ed Tobin, who acted as a reasonable arbiter, said that **Mr. Boksner’s** comment about licensing was out of line because a special master does not have to have a Florida licenser any license at all for that matter. Commissioner Tobin is a former prosecutor and a recent

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Aleksandr Boksner

(Articles are in reverse chronological order)

graduate from the police academy. He observed that **Mr. Boksner** was an aggressive prosecutor making his case, perhaps too aggressively.

Anyway, he said, he did not see why he should have to dismiss a special master simply because the city attorney disagreed with him. “Babak is raising the bar,” he said, and should be valued for that. Mayor Bower, from the very beginning of the committee meeting, noting that the disputes were about a small number of cases, viewed the matter as a personality clash. She was tired of the lawyerlike quibbling. It was an HR issue rather than a legal one. She advised the disputants to have more respect for one another. **Boksner** then held his peace.

However, as the meeting adjourned, a duel nearly broke out between Mr. Smith and Mr. Movahedi. “You are not a circuit judge,” Mr. Smith said. “You cannot legislate! You must abide by the law.” “That is what I did! You, sir, have an opinion on what the law is, but that is not necessarily correct. If you do not like a ruling, then you can appeal. “Lacking seconds for the fray, the imminent duel was quashed, leaving a Mexican Standoff.

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Aleksandr Boksner

(Articles are in reverse chronological order)

Miami Herald, The (FL)
December 21, 2011

Miami Beach police chief search down to 13

A list of nearly 80 applicants for the job of Miami Beach police chief has been slimmed to 13.

Author: David Smiley

About a dozen candidates remain in the running to take the reins of Miami Beach's intensely scrutinized police department. Of the 13 applicants remaining from an initial field of nearly 80, three are now overseeing police departments in Bal Harbour, Doral, and Hialeah, and another is now overseeing the Beach's police force of roughly 360 sworn officers.

Another half-dozen applicants are or were high-ranking officers atop local departments within the county, mostly from the city of Miami. And three are senior officials in departments outside of South Florida.

Nearly half the remaining candidates were passed over this month for the Miami police chief position when the city chose to hire internally.

Miami Beach administrators have been seeking a new chief since September after elected officials pushed the issue in anticipation of the departure of Chief Carlos Noriega, who is officially set to retire at the end of the year.

Noriega relinquished control of the city's police department in November following high profile investigations of officers' alleged gay-bashing, a fatal Memorial Day shooting in which four bystanders were wounded, and an officer's drunken ATV joyride that internal affairs investigators deemed was surrounded by lax or negligent supervision.

According to a city memo, 79 candidates applied for the job, which was advertised as paying between \$125,000 to \$200,000 a year.

The human resources department and City Manager Jorge Gonzalez whittled the list down to 24. Those candidates then participated in phone interviews this month with Assistant City Manager Hilda Fernandez, Assistant Fire Chief Javier Otero, Assistant Director of Human Resources Rafael Granado, and Senior Assistant City Attorney **Aleksandr Boksner**, who advises the police department.

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Aleksandr Boksner
(Articles are in reverse chronological order)

Miami Herald, The (FL)
July 31, 2009

THE PLIGHT OF A ROOSTER: Miami Beach's plucky rooster Mr. Clucky loses code fight

A popular rooster and his publicity-shy girlfriend who live in a South Beach condo might need to find a new place to roost after a code-enforcement ruling.

LARRY LEBOWITZ

Round One in the battle between Mr. Clucky and the city of Miami Beach goes to The Man. Mr. Clucky, the most famous rooster in Miami Beach, is no longer welcome to live in a South Beach studio apartment with his passionate handyman-carpenter-activist owner Mark Buckley. A special hearing officer on Thursday ordered Buckley to pay a \$50 fine and gave city code officers the authority to remove Mr. Clucky, and his publicity-shy hen girlfriend, Wallflower, from Buckley's first-floor condo on Jefferson Avenue.

Miami Beach code prohibits keeping, harboring, maintaining or stabling of poultry and other livestock in residential areas. Buckley counters that Mr. Clucky and Wallflower are neither slaughterhouse nor supermarket bound. They are, he argues, domesticated pets that lead better lives than most factory-farmed fowl. "This is just a bunch of crazy semantics," a slightly exasperated Buckley told a phalanx of cameras after the hearing. "Mr. Clucky may be an outlaw, but he's not a criminal."

Mr. Clucky has become a minor South Beach celebrity in the three years since Buckley rescued the knife-scarred rooster and nursed him back to health. Naturally, Mr. Clucky has his own website and merchandise line. Buckley squires Mr. Clucky around Lincoln Road Mall, to area coffee shops and bars, with the rooster perched on his bicycle handlebars to the delight of children and tourists and out-of-town TV camera crews. But there are some who aren't fans of the popular fowl.

Sonia Gonzalez, who owns the adjacent condo to Buckley's, testified that she is afraid she won't be able to rent the unit. She said the current tenant, who tends bar, complained about the "crowing at all hours of the night" -- a charge that Buckley denied. Buckley also dismissed accusations of another neighbor, Donita Leavitt, as spillover from unrelated condo contretemps and litigation intrigue.

While ruling against Buckley, Special Master Joe Kaplan encouraged the activist to consider asking the City Commission for a special exception to the current codes. Buckley -- whose other claim to fame is the "Frankenbike," a seven-wheeled welded contraption of scrap bicycles, a tricycle and chain link-fencing -- could also appeal to the courts.

Assistant City Attorney **Aleksandr Boksner** specifically asked Kaplan to include language in his order that would give code officers the authority to remove the birds if Buckley continued to flout the code.

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But city spokeswoman Nanette Rodriguez dispelled all rumors that a code enforcement team was gearing up for a SWAT-style raid on Buckley's studio. At Thursday's hour-plus hearing, Kaplan refused to let Mr. Clucky testify. "But he's Exhibit A," Buckley pleaded. "The nature of my bird is the No. 1 witness in this case."

"That the rooster is going to be a witness is not going to sit well with me," Kaplan responded. Buckley's sister Andrea -- who oversees www.mrclucky.com from her Massachusetts home -- eventually was forced to carry the rooster out of the commission chambers. Loud cries occasionally disrupted the proceedings, eliciting chuckles from the atypically large audience for a code-enforcement hearing day. "He wishes I was out there," Buckley told the hearing officer. "My rooster wants his second breakfast."

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Aleksandr Boksner
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North Port Sun (FL)
October 13, 2008

Charlotte County argues Ona appeal
Litigation proliferates over phosphate mining

Author: Unknown

To strip mine phosphate in Central Florida these days, Mosaic Fertilizer needs lots of land, digging machines and, apparently, lawyers. With representation from three law firms based in Tampa, Orlando and Tallahassee, Mosaic is defending itself against a spate of lawsuits and permit challenges under way simultaneously in four counties.

Friday, Mosaic took Charlotte County Attorney Janette Knowlton to court. The company filed a suit seeking a judge's order to force Knowlton to release transcripts of secret meetings between the Charlotte County Commission and its legal team.

Knowlton's attorney, Assistant County Attorney **Aleksandr Boksner**, argued the transcripts are exempt from Florida's public records laws because they are attorney-client discussions.

Circuit Judge Keith Kyle agreed to Mosaic's request that he review the transcripts and set another hearing before deciding whether to dismiss the case.

Thursday, an attorney for Charlotte County presented oral arguments to a panel of appellate judges in Tampa. The county was seeking to reverse the Florida Department of Environmental Protection's decision to grant permits for Mosaic's 4,200-acre Ona-Fort Green mine extension. The Ona mine is part of a 20,675-acre tract that Mosaic hopes to strip mine on both sides of Horse Creek in Hardee County. Next month, Lee and Sarasota counties take Mosaic to an administrative hearing in Tallahassee to challenge state permits for the company's 10,700-acre South Fort Meade mine. The mine is located along the Peace River in Hardee County.

Attorneys for the counties are rushing to prepare for that trial within a 90-day summary hearing rule. The rule gives phosphate companies the right to demand a speedy trial. Mosaic's suit against Knowlton is related to Lee County's permit challenge. Mosaic, in that case, claimed that Ed de la Parte, Charlotte County's special environmental attorney, should be disqualified because he has a conflict of interest.

According to Mosaic, De la Parte's conflict stems from the fact he had worked for Charlotte County to negotiate a litigation settlement agreement that was never ratified. He also represents Lee County in its challenge of the South Fort Meade permits. Mosaic's attorneys cite the fact that three county commissioners, in a public meeting in September, said they had objected during a secret meeting in August to de la Parte's representing Lee County in its permit challenge. In Friday's hearing, **Boksner** argued that Mosaic's attorney had "improper communication" with Charlotte commissioners. He was referring to letters Mosaic's attorney wrote to Knowlton claiming that de la Parte had a conflict of interest. Mosaic's attorney also sent the letters to the

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county commissioners. **Boksner** told the judge Mosaic's attorneys "fabricated" de la Parte's conflict of interest and were "disingenuous" in presenting that argument to the court, according to a clerk's minutes of the hearing.

De la Parte, in motions in the Lee County case, argued Mosaic's motion to disqualify him should be dismissed. De la Parte cited past court cases in which judges warned that motions to disqualify an opponent's attorney could be used to "harass" the opposing side. In Charlotte's Ona appeal Thursday, David Caldevilla, an attorney with the de la Parte firm, argued the DEP had failed to consider cumulative environmental impacts in granting the Ona permit.

Mosaic had argued no cumulative impact study was necessary because the company proposed to mitigate the destruction of wetlands by creating manmade wetlands within the same watershed. However, the county cited an administrative judge's past ruling that found Mosaic was unable to reclaim streams and bay swamps, Caldevilla said. "(Those types of reclamation) had never been done successfully in the past," he said. "But, this project still allows Mosaic to destroy those water bodies."

Caldevilla and Mosaic spokesman David Townsend each said they were optimistic their side had won the Ona appeal. But Caldevilla pointed out the appeal involves 40,000 pages of administrative court records, testimony from 43 experts, thousands of exhibits, myriad government regulations, nine weeks of trial transcripts and a 600-page final order. "I'm optimistic, but there are no guarantees," he said. "It's a huge record. So it's going to require a lot of diligence on the court's part."

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https://napavalleyregister.com/sports/rumph-admits-he-drank-but-says-he-wasn-t-drunk/article_3cb4fe24-9828-5c76-8282-7e38cfc6f625.html

February 14, 2003

Rumph admits he drank, but says he wasn't drunk

Author: The Associated Press

San Francisco 49ers cornerback Mike Rumph testified Thursday that he was not intoxicated when his vehicle was stopped by police in Miami Beach last summer.

Rumph, 23, said he had two mixed drinks — cola with Courvoisier cognac — while he danced to reggae and hip-hop music with friends during two hours at a South Beach club.

He said about 60 percent of the six ounce glasses contained cola and ice and he never spilled the drinks on the dance floor. When he left the club during the early morning hours of last July 6, Rumph said, he was sober. "I had no trouble driving. I was not high. I didn't have any buzz," Rumph said. "I had no trouble controlling the car. I wasn't driving under the influence."

Police say Rumph's blood-alcohol level was .091. Under Florida law, it is illegal to operate a motor vehicle with a blood-alcohol level above .08. The trial was in its third day Thursday.

On cross-examination, prosecutor **Aleksandr Boksner** pressed Rumph about the field sobriety tests, arguing that he had to have split-second timing and great balance as a football player.

Rumph said he passed all of the field sobriety tests but did not understand the instructions at first when an officer swept a pen in front of his face and asked that his eyes follow the tip. "The first one I didn't understand what he was saying. I was confused by the questions," Rumph said.

Rumph had 41 tackles and one forced fumble in 16 games with the 49ers. He was a key member of the University of Miami's 2001 national championship team and was selected as the first-round choice of the 49ers in the 2002 NFL draft, signing a five-year, \$6.4 million contract.

Research Compiled by: Shannon Farr
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