

# **Press Release**

## **Appeals Court Denies County's Two Motions in Clerk's Audit Case**

On November 13, 2009, the District Court of Appeal (DCA) of the State of Florida, Second District issued an [order](#) denying two motions filed by Collier County in the Dwight E. Brock vs. Board of County Commissioners audit case. The DCA denied both the county's motion to rehear the case and to certify the case to the Florida Supreme Court.

By issuing its order, the court reaffirmed its ruling to uphold the Clerk's right to audit "to the extent that the Clerk is the custodian of all county funds, he necessarily can only be the custodian of those funds to which he has been given custody, which would presumably encompass all County funds."

The Board of County Commissioners (BCC) could decide to continue their delay of the Clerk's audits by asking the Florida Supreme Court to accept jurisdiction which will require further significant expenditures of taxpayer dollars. This, in pursuit of the very act the DCA refused to ask the Supreme Court to consider.

"The voters of Collier County should be watching the BCC's response to the court's recent decision with great interest," Mr. Brock stated. "It's long overdue that the BCC allow the Clerk to do his job without further delay, interference or waste of tax dollars on needless lawsuits. This dog has been chasing its tail for seven years and it's time to stop."

The DCA opinion stated "A public officer with the right and responsibility to maintain custody of public funds necessarily has the authority both to investigate circumstances in which public funds have wrongfully been withheld from the officer's custody and seek to obtain custody of the withheld funds. Restricting the Clerk's authority to do so is inconsistent with the goal of protecting public funds from misappropriation, and it is inconsistent with the effectual and complete exercise of the Clerk's authority as custodian of all county funds."

The DCA decision concluded that the trial court's ruling prohibiting post payment audits is inconsistent with the Clerk's statutory power to inspect and examine all county accounts at all times and with the Clerk's statutory duty to ensure all payments of county funds comply with applicable legal requirements. Post-payment audits to verify the legality of payments that have been made are necessary to effectively carry out the Clerk's duty to ensure that county funds are expended only as authorized by law. Verification of the legality of payments already made – a process which tests the soundness of existing internal controls – is directly related to ensuring that future payments are legal. To deny the Clerk the ability to conduct such post payment

audits would compromise the Clerk's duty and power to guard against the illegal use of county funds.

The DCA stated that prior to signing any warrant for the payment of any claim, bill or indebtedness from county funds, the Clerk is required to insure that the payment is lawful. Consequently, any auditing necessary to insure the legality of the expenditure prior to payment is proper.

To read the complete DCA opinion visit [CollierClerk.com](http://CollierClerk.com) in the "News Room" to read "Appeals Court Reaffirms Brock's Role as Auditor and Custodian of All County Funds" dated September 24, 2009.

**For more information contact:**

Robert D. St. Cyr, Director, Office of Community Outreach

Clerk of the Circuit Court, Collier County

Telephone: (239) 252 6879

[Robert.StCyr@CollierClerk.com](mailto:Robert.StCyr@CollierClerk.com)

**November 17, 2009**